

This TILA-RESPA Integrated Mortgage Disclosure resource is an unofficial transcript of the Outlook Live Know Before You Owe Mortgage Disclosure Rule – Construction Lending webinar that was held on March 1, 2016.

This transcript has been prepared by **Sheshunoff Consulting + Solutions**, includes slide images from the webinar, and has not been reviewed by any supervisory agency. Efforts were taken to accurately transcribe the presenters' comments and were based on the audio recording provided by the Federal Reserve. This resource is provided for informational purposes only. To listen to the audio and view the slides, interested parties may find that information here: <https://www.consumercomplianceoutlook.org/outlook-live/2016/know-before-you-owe-mortgage-disclosure-rule-construction-lending/>

**Know Before You Owe
Mortgage Disclosure Rule –
Construction Lending**

Outlook Live Webinar – March 1, 2016

<i>Nick Hluchyj</i>	<i>Kristin Switzer</i>	<i>Dania Ayoubi</i>
<i>Senior Counsel</i>	<i>Regulatory Implementation</i>	<i>Counsel</i>
<i>Office of Regulations</i>	<i>Analyst</i>	<i>Office of Regulations</i>
	<i>Office of Regulations</i>	

Visit us at www.consumercomplianceoutlook.org

OUTLOOK LIVE
The Federal Reserve System's audio conference series on consumer compliance issues.

The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System.

Good afternoon and welcome to Outlook Live. I'm Mike Vander Velde with the Federal Reserve, and I will be your facilitator. Today we'll explore the Know Before You Owe Mortgage Disclosure Rule focused on construction lending. First, let me be the first to welcome and thank our presenters. You're going to be hearing from them in just a moment. But first we're going to jump over to slide number 2 and cover some of the logistics for this call. If you haven't done so yet already, go ahead and click on the webinar link that you received after registering. You can also head over to our website and that is www.consumercomplianceoutlook.org. There you can find the session materials and eventually the archive of the call as well. Just a quick note on the webinar, we encourage you to listen to the audio through your PC. But if you need a phone option, we do have a limited number available. As for questions, we won't have time to take any on the call today, but you can submit them for future consideration by clicking the Ask Question button right there on the webinar tool.

I'd also like to point out something new to the Outlook Live program – we are now offering continuing professional education credits for attending sessions. If you are interested in that, you must do two things. First you must be registered for this session, and, second, you must complete the post session survey and indicate that you're interesting in receiving that credit.

OK, now I'd like to cover a little bit of legal language real quick before we get started. The opinions expressed in this presentation are intended for informational purposes and are not formal opinions of nor binding on the Federal Reserve Bank of St. Louis or the Board of Governors of the Federal Reserve System. I would also like to note that we may run 5 to 10 minutes over our allotted hour today. I just wanted to get out in front of that and let you be aware of that. Again, we are going to record this and make the archives available on our website so you can always come back and listen to the last 10 minutes if you have to leave at the top of the hour. With that said, we are ready to get started.

Welcome to Outlook Live

- **Logistics**
 - Call-in number: 1-888-625-5230
 - Conference code: 89393494
 - <https://www.webcaster4.com/Webcast/Package/577/13246>
- **Webinar**
 - You can choose to listen to the audio through your PC speakers or dial in through the phone option. **Please note:** If you experience problems with the PC audio at any time, you can dial in using the number and code above.
 - **Materials** button
- **How we'll take questions**
 - Use the **Ask Question** button in the webinar
 - If time permits, questions submitted during the session may be addressed. All questions will be logged for further evaluation.
- **Legal Disclaimer**
 - The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System.
- **CPE Credits**
 - CPE credits are available for this session. If you would like to obtain credit, please complete the participant survey within 48 hours of the live event and indicate in the survey that you would like to receive credit for this session.

OUTLOOK
LIVE

The Federal Reserve System's audio conference series on consumer compliance issues

The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System.

I'm going to turn to **slide number 2** and pass the mic over to the CFPB's Kristin Switzer. Thanks Mike. Good afternoon and welcome to the Bureau's webinar on construction lending and the "Know Before You Owe" mortgage disclosures. My name is Kristin Switzer with the Regulatory Implementation Team at the Bureau and joining me are my colleagues Nick Hluchyj and Dania Ayoubi with the Office of Regulations. This webinar will focus on how to disclose the Loan Estimate for construction loans under the TILA/RESPA integrated disclosure rule. Many of the concepts we'll discuss are familiar TILA principles, and we'll walk through how these concepts apply to the Loan Estimate. The general format will be similar to prior webinars on the integrated disclosure rule. We'll use slides that display the question and then a citation to the relevant, regulatory, and commentary text, which the presenter will discuss. This session will be recorded, and we will provide a link to the recording on the Bureau's website. As with previous webinars, on the integrated disclosure rule, we will also provide on the Bureau's website an index to the questions we explore today.

Disclaimer

This presentation:

- Is current as of March 1, 2016.
- Does not contain legal interpretations, guidance, or advice.
- Is not a substitute for the Integrated Disclosure Rule. Only the Rule and its official interpretations can provide complete and definitive information regarding the Rule's requirements.
- Is not binding on the Bureau and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner.



3

The disclaimer on **slide 3** is our standard disclaimer that you've likely seen before and serves as a reminder that the rules and commentaries speak for themselves. We have attempted to ensure that the contents of this webinar are accurate. But if anything is inconsistent with the rule or commentary, the rule or commentary prevails. We cannot amend the rules through a webinar but only through notice and comment rulemaking. Next slide please.

Background

- Covered construction loans under the Integrated Disclosure Rule:
 - Closed-end consumer credit transactions secured by real property (12 CFR 1026.19(e)(1)(i) and (f)(1)(i))
- Disclosure requirements, guidance, and implementation materials:
 - Generally apply to covered construction loans, even if the guidance isn't directly on construction loans
- Although there are differences between the Loan Estimate and prior early disclosures under TILA and RESPA, there are similarities that help in working through questions.



4

Here we have some background items that we would like to note before jumping into the questions. First, as discussed in the recent construction lending fact sheet, posted on our regulatory implementation webpage, a creditor is required to use the Loan Estimate and the Closing Disclosure for construction loans that are closed-end consumer credit transactions secured by real property. Short-term construction loans that meet this definition, including those that would be excluded as temporary financing under RESPA and Regulation X, are subject to the integrated disclosure rule. A construction loan that is an open-end transaction or that has a commercial purpose is not covered. Second, the requirements and guidance relating to TILA or mortgage disclosures generally apply to covered construction loans, even if the guidance is not expressly about construction loans. As we go through the questions this afternoon, we will sometimes rely on general principles and guidance in our responses or mention other implementation materials. Because it is not possible to answer every construction lending question in today's webinar, we would like to highlight that you should consider applicable general principles and guidance, as well as our other implementation materials when thinking through construction lending questions. At the end of the webinar, we have provided a slide with the web address where you can locate other implementation materials. Third, please remember that although the Loan Estimate might be different from prior TILA and RESPA disclosures in some regards, there are similarities. Many of you disclosed construction loans prior to the integrated disclosure rules and keeping the similarities in mind can help you effectively work through questions you might have regarding the Loan Estimate. As we respond to common questions this afternoon, we will point out some similarities that will help with completing the Loan Estimate for construction loans. Next slide please.

Some Basic Considerations

- Construction loans may have different loan terms and loan structures.
- There are options for the disclosure of construction loans under the Integrated Disclosure Rule.
- We cannot address all possible loan terms, loan structures, and disclosure options in this webinar.
- If a question only refers to a particular loan term, loan structure, or disclosure option, it doesn't mean that other loan terms, loan structures, or disclosure options are prohibited.
- If we only address a particular type of loan, it doesn't mean that the disclosure only applies to that type of loan.



5

And finally, as shown on **slide 5**, we offer some basic considerations before we jump into the substantive questions. We encourage listeners to keep in mind that although a question or response may only address a construction loan that is structured a particular way or has particular terms, this does not mean that the disclosure or issue addressed by the question or response does not apply to construction loans that may be structured differently or have different terms. Construction loans may vary widely among lenders, and there may be multiple permissible ways to disclose a transaction. So, although we cannot address every structure, every term, or all possible disclosure alternatives for construction loans, the fact that we only mention a particular loan term, structure, or disclosure option does not mean that others are prohibited. Our responses should not be interpreted as the Bureau opining on particular business practices or methods of structuring construction loans. Next slide please.

Long-Standing Options – Still Available

- **Q1:** What options does a creditor have for disclosing construction loans?
- 12 CFR 1026.17(c)(6)(ii) – “When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.”
- Appendix D – “Section 1026.17(c)(6) permits creditors to treat multiple advance loans to finance construction of a dwelling that may be permanently financed by the same creditor either as a single transaction or as more than one transaction.”
- Comment 37(a)(9)-1.iii – “For additional guidance on disclosing construction-to-permanent loans, see § 1026.17(c)(6)(ii), comments 17(c)(6)-2 and -3, and appendix D to this part.”



6

Now, onto our first question, and more about the long-standing Regulation Z disclosure options still available to creditors under the integrated disclosure rule. Next, looking at **slide six, can you tell us what options does a creditor have for disclosing construction loans?** Thank you Kristin. Creditors continue to have several options in disclosing construction loans under the integrated disclosure rule. Regulation Z at section 1026.17(c)(6)(ii) and Appendix D have long-standing options for disclosing certain construction loans and construction-to-permanent loans. These same options are still available to creditors under the integrated disclosure rule as specifically stated in comment 37(a)(9)-1.iii. Section 1026.17(c)(6)(ii) is a core provision for disclosing construction loans. We will be explaining how this section relates to the general provisions of the Loan Estimate throughout this webinar. Under section 1026.17(c)(6)(ii), the creditor may choose whether to disclose a construction-to-permanent loan as one transaction or as two separate transactions. If the creditor chooses to disclose the loan as one transaction, a single set of disclosures, one Loan Estimate and one Closing Disclosure, covers both phases of the transaction. If the creditor chooses to disclose the loan as two separate transactions, the construction phase has its own Loan Estimate and Closing Disclosure, while the permanent phase has its own Loan Estimate and Closing Disclosure. These options apply regardless of whether the creditor chooses to have one closing or two. Therefore, the creditor may choose to have a single closing but still choose to disclose the construction phase and permanent phase separately; in which case, the creditor would provide both disclosures at or before consummation following the same timing requirements as for any other covered loan. For more information, see comment 17(c)(6)-2. Similar to section 1026(c)(6)(ii) *[we believe the speaker intended to say 1026.17(c)(6)(ii)]* Appendix D permits the creditor to disclose multiple advance loans to finance the construction of a dwelling that may be permanently financed by the same creditor, either as a single transaction or as more than one transaction, and also provides methods that creditors may use at their option to estimate and disclose the terms of multiple advance construction loans when the amounts or timing of advances is unknown at consummation. Later in the webinar,

we'll talk a little more about how Appendix D can be used with specific disclosures and some of the options for those specific disclosures. Next slide please.

Thanks Nick. We look forward to hearing more about Appendix D later in the webinar.

Loan Estimate – Page 1 – General Information

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate	LOAN TERM
DATE ISSUED	PURPOSE
APPLICANTS	PRODUCT
	LOAN TYPE <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____
	LOAN ID #
PROPERTY	RATE LOCK <input type="checkbox"/> NO <input type="checkbox"/> YES, until
SALE PRICE	<i>Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on</i>



7

Now we'll address questions on the general information disclosures that appear at the top of page 1 of the Loan Estimate. **Slide 7** illustrates these general information disclosures. Although the example Loan Estimate on slide 7 uses sale price, other sample Loan Estimate forms use estimated property value. Next slide please.

Sale Price and Estimated Value

- **Q2:** When does the creditor disclose a sale price or estimated value if the loan proceeds finance construction costs?
- 12 CFR 1026.37(a)(7)
 - (i) “For transactions that involve a seller, the contract sale price of the property . . . labeled ‘Sale Price.’”
 - (ii) “For transactions that do not involve a seller, the estimated value of the property . . . labeled ‘Prop. Value.’”
- Comment 37(a)(7)-1



8

Dania, my first question for you - **When does the creditor disclose a sale price or estimated value if the loan proceeds finance construction costs?** The answer will depend upon whether the transaction involves a seller and whether the sale price is known at the time the disclosure is made. The use of loan proceeds to finance construction costs does not by itself impact whether the creditor discloses the sale price or estimated property value on the Loan Estimate. In transactions where there is a seller, the creditor is required to disclose the contract sale price of the property, if known, under section 1026.37(a)(7)(i). If the sale price is not yet known, the creditor may disclose the estimated value of the property that is used as a basis for the disclosures in the Loan Estimate, as stated in comment 37(a)(7)-1. In transactions without a seller, section 1026.37(a)(7)(ii) requires the creditor to disclose the estimated value of the property at the time the disclosure is issued to the consumer. Absent its own estimate, the creditor may use the estimate provided by the consumer at application. In the context of construction loans, a transaction without a seller includes, for example, instances in which the consumer already owns the land on which the consumer will construct a dwelling. Next slide please.

Sale Price and Estimated Value

- **Q3:** What amount does a creditor disclose if the creditor has an appraisal or valuation that will be used, or may be used, during underwriting of the application?
- Comment 37(a)(7)-1
 - “If the creditor has obtained any appraisals or valuations of the property for the application at the time the disclosure is issued to the consumer, the value determined by the appraisal or valuation to be used during underwriting for the application is disclosed as the estimated property value.”
 - “If the creditor has obtained multiple appraisals or valuations and has not yet determined which one will be used during underwriting, it may disclose the value from any appraisal or valuation it reasonably believes it may use in underwriting the transaction.”



9

Thanks Dania. A related follow-up question on **slide 9. What amount does the creditor disclose if the creditor has an appraisal or valuation that will be used or may be used during underwriting of the application?** If the creditor has obtained any appraisals or valuations of the property, the creditor discloses, as the estimated property value, the value determined by the appraisal or valuation that will be used during underwriting the mortgage application. If the creditor has obtained multiple appraisals or valuations and has not yet determined which one it will use during underwriting, the creditor may disclose the value stated in any of the multiple appraisals or valuations that the creditor reasonably believes it may use in underwriting the transaction. For more information, see comment 37(a)(7)-1. Next slide please.

Purpose: Purchase, Refinance, Construction, or Home Equity

- **Q4:** What purpose is disclosed when a consumer finances the purchase of real property and construction costs?
- 12 CFR 1026.37(a)(9)
 - (i) Purchase
 - (ii) Refinance
 - (iii) Construction
 - (iv) Home equity loan
- Comment 37(a)(9)-1



10

Thanks Dania. Next, I have two questions for you regarding what a creditor discloses as the purpose on page one of the Loan Estimate. **What purpose is disclosed when a consumer finances the purchase of a real property and construction costs?** If a consumer uses the loan proceeds to finance both the purchase of real property and construction costs, the creditor must disclose the purpose as purchase. The use of loan proceeds to finance construction costs does not by itself impact the disclosure of the loan's purpose on the Loan Estimate. Section 1026.37(a)(9) defines four possible purposes in the following waterfall order - (i) purchase, (ii) refinance, (iii) construction, and (iv) home-equity loan. Comment 37(a)(9)-1 illustrates and clarifies each defined purpose. When determining which purpose to disclose, a creditor must look at the waterfall of four possible purposes in the order that they appear in section 1026.37(a)(9) and select the first one that applies to the loan. To illustrate use of the waterfall, if the loan meets the definition of "purchase" because the consumer intends to use the credit to purchase the property that will secure the loan, the creditor must disclose the purpose as "purchase" even if the loan also meets any other definitions appearing later in the waterfall. A creditor must disclose the purpose as "refinance," if the consumer intends to use the credit to construct a dwelling on real property that the consumer already owns and to satisfy an existing loan secured by that real property. If the credit will be used to finance the initial construction of a dwelling on the property and will not be used for any purchase or refinance purpose, the creditor must disclose the purpose as "construction." Even if the loan is secured by real property being purchased and disclosed as a purchase on the Loan Estimate, if the loan is also financing the construction of a dwelling, the provisions of section 1026.17(c)(6)(ii) still apply. So the loan's purpose as disclosed on the Loan Estimate does not impact the applicability of other construction specific provisions of Regulation Z. Next slide please.

Purpose: Separate Permanent Phase Disclosure

- **Q5:** If the creditor provides separate sets of disclosures for the construction phase and the permanent phase, what purpose is disclosed for the permanent phase?
- 12 CFR 1026.37(a)(9)(ii) – “If the credit is not for the purpose described in paragraph (a)(9)(i) of this section, and if the credit will be used to refinance an existing obligation, as defined in § 1026.20(a) (but without regard to whether the creditor is the original creditor or a holder or servicer of the original obligation), that is secured by the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for a ‘Refinance.’”
- Comment 37(a)(9)-1



11

Thanks for that explanation Dania. In a related follow-up question on **slide 11** - **If the creditor provides separate sets of disclosures for the construction phase and the permanent phase, what purpose is disclosed for the permanent phase?** The creditor must disclose “refinance” for the purpose of the permanent phase under section 1026.37(a)(9) and its related commentary. As stated in the question, the creditor has chosen to disclose the phases of the construction-to-permanent loans as two separate transactions. When each phase is disclosed and considered as a separate transaction and the proceeds of the permanent transaction satisfy the outstanding balance due at the conclusion of the construction transaction, the credit meets the definition of a “refinance” purpose under section 1026.37(a)(9)(ii). Next slide please.

Product: Single Disclosure, Fixed Rates

- **Q6:** What does a creditor disclose as the product if a construction-to-permanent loan disclosed in a single set of disclosures has different fixed rates for the construction and permanent phases?
- 12 CFR 1026.17(c)(6)(ii) – “[T]he construction phase and the permanent phase may be treated as either one transaction or more than one transaction.”
- 12 CFR 1026.37(a)(10)(i) – (A) Adjustable rate; (B) Step rate; (C) Fixed rate
- 12 CFR 1026.37(a)(10)(i)(B) – “If the interest rate will change after consummation, and the rates that will apply and the periods for which they will apply are known at consummation, the creditor shall disclose the loan product as a ‘Step Rate.’”



12

Thanks Dania. Now we have a few questions related to the product disclosure on the Loan Estimate beginning on **slide 12**. Nick, **what does a creditor disclose as the product if a construction-to-permanent loan disclosed in a single set of disclosures has different fixed rates for the construction and permanent phases?** When a single disclosure is used for both the construction and permanent phases and each phase has a different fixed rate, the creditor must disclose the product as “Step Rate.” The product disclosure under section 1026.37(a)(10)(i) provides three possible categories that may be disclosed - Adjustable Rate, Step Rate, or Fixed Rate. If a single disclosure is used for both the construction phase and the permanent phase, as permitted under section 1026.17(c)(6)(ii), and each phase has a different fixed rate, the two phases are considered a single transaction in which the contract terms of each of the phases are combined. The analysis to determine what the creditor must disclose for products for this combined single transaction is the same as it would be for any other single transaction. The question posed - we have a loan in which all three elements of Step Rate under section 1026.37(a)(10)(i)(B) are met. First, the interest rate will change after consummation. We know the initial fixed rate that applies during the construction phase will change to the fixed rate that will apply during the permanent phase. Second, the rates that will apply at consummation are known. We know what the rate is for the construction phase, and we know what the rate is for the permanent phase. And third, the periods for which the rates will apply are known at consummation. We know what the construction period is and what the permanent period is. If, however, the creditor chooses to provide separate disclosures for the construction phase and the permanent phase, the products for each disclosure is “Fixed Rate,” even if each phase has a different rate. For example, if separate disclosures are provided for the construction phase and the permanent phase and the construction phase has a fixed rate of 4.5%, while the permanent phase has a fixed rate of 5%, the product disclosure would be “Fixed rate” for both the separate construction phase disclosure and the separate permanent phase disclosure. Next slide please.

Product: Single Disclosure, Fixed and Adjustable Rates

- **Q7:** What does a creditor disclose as the product if a construction-to-permanent loan disclosed in a single set of disclosures has an adjustable rate for one phase and a fixed rate for the other phase?
- 12 CFR 1026.37(a)(10)(i)(A) – “If the interest rate may increase after consummation, but the rates that will apply or the periods for which they will apply are not known at consummation, the creditor shall disclose the loan product as an ‘Adjustable Rate.’”
- Comment 37(a)(10)-1.i



13

Thanks Nick. And to follow up on **slide 13 - What does a creditor disclose as the product if a construction-to-permanent loan disclosed in a single set of disclosures has an adjustable rate for one phase and a fixed rate for the other phase?** When a single set of disclosures is used and one phase of a construction-to-permanent transaction has an adjustable rate and the other phase has a fixed rate, the creditor must disclose the loan product as “Adjustable Rate.” The loan meets the definition of adjustable rate under section 1026.37(a)(10)(i)(A) because the interest rate may increase after consummation, and the rates that will apply are not known at consummation. This is also consistent with the examples of loans in comment 37(a)(10)-1.i that have both a fixed and an adjustable rate and are disclosed as “Adjustable Rate.” Next slide please.

Product: Interest Only and Balloon Payment Features

- **Q8:** If a construction loan is disclosed separately from the permanent loan and has both an interest-only feature and a balloon payment, what feature is disclosed for the product disclosure?
- 12 CFR 1026.37(a)(10)(ii)
 - (A) Negative Amortization
 - (B) Interest-Only Feature
 - (C) Step Payment
 - (D) Balloon Payment
 - (E) Seasonal Payment
- 12 CFR 1026.37(a)(10)(iii) – “If a transaction has more than one of the loan features described in paragraph (a)(10)(ii) of this section, the creditor shall disclose only the first applicable feature in the order the features are listed in paragraph (a)(10)(ii) of this section.”
- Comment app. D-7.i



14

Thanks Nick. I have another product disclosure question for you on **slide 14**. **If a construction loan is disclosed separately from the permanent loan and has both an interest-only feature and a balloon payment, what feature is disclosed for the product disclosure?** The creditor must disclose the interest-only feature but not the balloon payment feature. Section 1026.37(a)(10)(iii) provides that if a transaction has more than one loan feature, the creditor only discloses the first feature in the order that the features are listed in section 1026.37(a)(10)(ii). When the construction phase of a construction-to-permanent loan is disclosed separately from the permanent phase, both an interest-only feature and a balloon payment feature may be present. Because the interest-only feature is listed before the balloon payment feature in section 1026.37(a)(10)(ii), the creditor must disclose the interest-only feature but not the balloon payment feature. The illustration at comment appendix D-7.i describes the disclosure of the construction phase of a construction-to-permanent transaction as a product with a balloon payment feature pursuant to section 1026.37(a)(10)(ii)(D). It is important to emphasize that the comments at appendix D-7 only provide illustrations of the application of Appendix D. These illustrations are to be read together with and in conformance with the applicable rules. Read together with the applicable regulatory provisions at section 1026.37(a)(10)(iii), comment Appendix D-7.i illustrates the disclosure that is made in the limited circumstance when a loan with a balloon payment feature does not have either negative amortization, interest-only, or step payment features. Next slide please.

Loan Estimate – Page 1 – Loan Terms Table

Loan Terms	Can this amount increase after closing?
Loan Amount	
Interest Rate	
Monthly Principal & Interest <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	
	Does the loan have these features?
Prepayment Penalty	
Balloon Payment	



15

Thanks for those clarifications Nick.

We'll now move on to discuss the next section of page one of the Loan Estimate, a table that appears under the heading Loan Terms. This table is illustrated on **slide 15**. Next slide please.

Interest Rate

- **Q9:** In the case of separate disclosures, how does a creditor disclose the interest rate when the creditor does not know what interest rate will apply to the permanent phase?
- 12 CFR 1026.37(b)(2) – “For an adjustable rate transaction, if the interest rate at consummation is not known, the rate disclosed shall be the fully-indexed rate, which, for purposes of this paragraph, means the interest rate calculated using the index value and margin at the time of consummation.”
- Comment 37(b)(2)-1
- Comment 19(e)(1)(i)-1
- 12 CFR 1026.17(c)(2)(i)
- Comment 17(c)(2)(i)



16

Dania, on **slide 16**, we have a question regarding how to disclose the interest rate on the Loan Estimate for a construction-to-permanent loan. **In the case of separate disclosures, how does the creditor disclose the interest rate when the creditor does not know what interest rate will apply to the permanent phase?** When separate disclosures are made for the construction phase and the permanent phase, the interest rate disclosed on the Loan Estimate for the permanent phase will depend on whether the permanent phase has an adjustable rate or a fixed rate. If the permanent phase has an adjustable rate and the interest rate that will apply at consummation is not known when the Loan Estimate is provided, the creditor is required to disclose the fully indexed rate, which is the interest rate calculated using the index value and margin at the time of consummation. Even though payments may not begin for months after consummation, section 1026.37(b)(2) requires the disclosure of the fully indexed rate. If the index value and margin that will be in effect at the time of consummation are not known at the time the Loan Estimate must be provided, comment 37(b)(2)-1 explains that the fully indexed rate disclosed may be based on the index in effect at the time the disclosure is delivered. If the permanent phase has a fixed rate and there is a single closing, the creditor may not know what interest rate to disclose at consummation for the permanent phase for which a payment may not be required for many months. To address such a situation, comment 19(e)(1)(i)-1 provides that a disclosure is in good faith if it is consistent with section 1026.17(c)(2)(i), which provides that if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. Also see comment 17(c)(2)(i)-1. Next slide please. Thanks Dania.

Monthly Principal and Interest Payment

- **Q10:** What payment does the creditor disclose when using a single set of disclosures for a construction-to-permanent loan or for the construction phase of a construction-to-permanent loan when separate disclosures are used?
- 12 CFR 1026.37(b)(3) – “The initial periodic payment amount that will be due under the terms of the legal obligation”



17

Now on **slide 17**, we have a question for Nick regarding the monthly principal and interest disclosure in the loan terms table on page one of the Loan Estimate. **What payment does the creditor disclose when using a single set of disclosures for a construction-to-permanent loan or for the construction phase of a construction-to-permanent loan when separate disclosures are used?** The creditor must disclose the amount of the initial or first periodic payment that will be due under the terms of the legal obligation, as required under section 1026.37(b)(3). When a single set of disclosures is made for a construction-to-permanent loan, the initial payment will be the first payment made during the construction phase of the transaction. When separate disclosures are used, the initial payment for the construction loan is also the initial payment made during the construction phase. Next slide please.

Monthly Principal and Interest Payment Calculation

- **Q11:** How does the creditor calculate the initial payment for the construction phase?
- 12 CFR 1026.37(b)(2) – “The interest rate that will be applicable to the transaction at consummation”



18

Thanks Nick. **And, how does the creditor calculate the initial payment for the construction phase?** To calculate the initial payment, the creditor uses the interest rate that will be applicable to the transaction at consummation under section 1026.37(b)(2). While the interest rate used to compute the initial payment is known, the amounts to which the interest payment is applied may not be known. This is because the actual draw schedule, which generally determines the amount in which the actual interest payment will be based, may not be known. Next slide please.

Monthly Principal and Interest Payment Calculation: Appendix D

- **Q12:** What options does Appendix D provide for computing the initial payment?
- Appendix D – Part I – “Construction Period Disclosed Separately”
- Appendix D – Part II – “Construction and Permanent Financing Disclosed As One Transaction”



19

Thanks Nick. **Can you explain to us, what options does Appendix D provide for computing the initial payment?** The long-standing provisions of Appendix D specifically address the situation and provides special procedures that may be used to estimate interest and make disclosures for construction loans when the actual schedule of advances is not known. Appendix D provides two options, based on the commitment amount on which interest is payable or estimating the interest payable during the construction period. These two options are the same, whether the construction period is disclosed separately, which is covered under Part I of Appendix D, or if the construction and permanent periods are disclosed as one transaction, which is covered under Part II of Appendix D. The first option, consistent with Part I.A.1 and Part II.A.1 of Appendix D provides that if, under the terms of the legal obligation, interest is payable only on the amount actually advanced for the time it is outstanding, the creditor may assume one half of the commitment amount is outstanding at the contract interest rate for the entire construction period. If, however, interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursements, the second option under Part I.B.1 and Part II.A.2 of Appendix D permits the creditor to assume that the entire commitment amount is outstanding at the contract interest rate for the entire construction period. Next slide please.

Monthly Principal and Interest Payment Calculation

- **Q13:** Can you provide an example of how the initial payment would be calculated under Appendix D?

Appendix D - Part I.A.1 and Part II.A.1

Interest only, payable only on amount advanced

\$100,000, 5%, 12 mos.

$$\frac{1}{2} \times \$100,000 = \$50,000$$

$$\$50,000 \times .05 = \$2,500$$

$$\$2,500 / 12 = \$208.33$$

$$\text{Initial Payment} = \$208.33$$

Appendix D - Part I.B.1 and Part II.A.2

Interest only, payable on entire commitment amount

\$100,000, 5%, 12 mos.

$$\$100,000 \times .05 = \$5,000$$

$$\$5,000 / 12 = \$416.66$$

$$\text{Initial Payment} = \$416.66$$



20

Thanks Nick. **Can you provide an example of how the initial payment would be calculated under Appendix D?** Yes. Let's look at an example as shown on **slide 20** to illustrate how the initial periodic payment under section 1026.37(b)(3) is calculated using Appendix D. Using the first method, let's say we have a 12-month interest-only construction loan for \$100,000 at 5% with interest payable only on the amount actually advanced for the time its outstanding. Using the Appendix D assumption that one half the commitment amount of \$100,000 is outstanding for the entire construction period, we multiply \$50,000 by .05. The result is a total annual estimated interest payment of \$2,500, which is divided by 12 to yield as the initial periodic payments disclosed a monthly interest payment of \$208.33. Now let's tweak the example to illustrate the second method, which is used when the terms of legal obligation provide the interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursement. In this case, we would multiply \$100,000, the entire commitment amount, by .05, producing a total annual estimated interest payment of \$5,000, which is divided by 12 to yield as the initial periodic payment disclosed a monthly interest payment of \$416.66. This second example serves as a reminder that using one half of the commitment amount does not apply to the construction phase of all single construction-permanent transactions. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursement, interest is calculated on the entire, not half of the commitment amount. Our examples assume that the construction loan has a fixed rate. If, however, the construction loan in our example had an adjustable rate, the contract interest rate that would be applied to either half of or the entire commitment amount would be the fully indexed rate, which is disclosed as the interest rate under section 1026.37(b)(2). Next slide please.

Balloon Payment

- **Q14:** If the creditor is using a separate set of disclosures for the construction phase, what amount does the creditor disclose as the balloon payment in the Loan Terms table?
- 12 CFR 1026.37(b)(7)(ii) – “If an affirmative answer for a prepayment penalty or balloon payment is required to be disclosed, the following information shall be included, as applicable: . . . (ii) The maximum amount of the balloon payment and the due date of such payment.”
- Comment app. D-7.i – “[B]ecause the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), in addition to reflecting the balloon payment in the projected payments table.”



Thanks for the response and examples Nick. Dania, looking at **slide 21 - If the creditor is using a separate set of disclosures for the construction phase, what amount does the creditor disclose as the balloon payment in the loan terms table?** When the construction phase of the construction-to-permanent transaction is disclosed separately from the permanent phase, the balloon payment due at the end of the construction phase must be disclosed pursuant to section 1026.37(b)(7)(ii). The amount of the balloon payment will vary depending on the terms of the construction phase of the loan itself. When treated as a separate transaction, the construction phase is a loan with a balloon payment at the end of its term, as discussed in comment Appendix D-7.i. Viewed in this way for disclosure purposes, the construction phase is treated the same way any other loan would be with the exception that Appendix D provides special procedures that may be used to address unique aspects of a construction loan. The construction phase of a construction-to-permanent loan can be structured so that it has interest-only payments. Construction loans can also be structured so that the periodic payments cover interest that has accumulated to the day of payment. For example, in a 1-year construction loan with a fixed interest rate, if the final balance of the construction phase corresponds to the 12th or final monthly payment, the balloon payment disclosed under section 1026.37(b)(7)(ii) will include the interest that has accumulated since the 11th payment was made. Assuming interest-only payments and that the payment of interest has accumulated to the day of payment, the creditor must disclose the balloon payment as the loan amount plus the final amount of interest that has accrued between the 11th payment and the final balance of the construction phase. As we discussed earlier, the monthly interest payment computed in accordance with Appendix D would be used to determine the amount of this accrued interest. This is also consistent with section 1026.37(b)(7)(ii), which requires disclosure of the maximum amount of the balloon payment. If the construction loan has an adjustable rate, the required maximum amount of the balloon payment disclosed under section 1026.37(b)(7)(ii) is based upon the maximum payment of interest in the range of payments that would be disclosed in the projected payments table. We will return to this point after we discuss the projected payments table. It is also important to note,

however, that if the creditor uses one combined disclosure for the construction and permanent phases, a balloon payment is not a feature of the transaction. Therefore, the creditor discloses “no” in response to whether the loan has this feature under section 1026.37(b)(5) and leaves the disclosure blank under section 1026.37(b)(7)(ii) under the maximum amount and due date of the balloon payment. Next slide please.

Loan Estimate – Page 1 – Projected Payments Table

Projected Payments	
Payment Calculation	
Principal & Interest	
Mortgage Insurance	
Estimated Escrow <i>Amount can increase over time</i>	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments <i>Amount can increase over time</i>	<p>This estimate includes</p> <p><input type="checkbox"/> Property Taxes</p> <p><input type="checkbox"/> Homeowner's Insurance</p> <p><input type="checkbox"/> Other:</p> <p><i>See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.</i></p>
	In escrow?



22

Thanks Dania. As in the previous question, please note that the explanations and examples throughout the rest of this webinar assume that a consumer will be required to make interest-only payments during the construction phase of a construction-to-permanent loan. Other payment structures are permitted, but it is our understanding that most construction loans provide for interest-only payments during the construction phase.

With that assumption made clear, we will move on to a discussion regarding the projected payments table. **Slide 22** illustrates the projected payments table, which is located on page 1 of the Loan Estimate. First, we have a few questions for Nick. Next slide please.

Projected Payments: Separate Construction Phase

- **Q15:** If the construction phase is disclosed separately from the permanent phase, what payments are disclosed in the first column of the projected payments table if the construction phase has a fixed rate?
- 12 CFR 1026.37(b)(3) – “The initial periodic payment amount that will be due under the terms of the legal obligation”
- 12 CFR 1026.37(c) – “In a separate table under the heading ‘Projected Payments,’ an itemization of each separate periodic payment or range of payments”
- 12 CFR 1026.37(c)(2)(i) – “[I]ncluding the term ‘only interest’ if the payment or range of payments includes any interest only payment”

The first question about the projected payments table is on **slide 23**. **If the construction phase is disclosed separately from the permanent phase, what payments are disclosed in the first column of the projected payments table if the construction phase has a fixed rate?** If the construction phase has a fixed rate and interest-only payments, the amount of the payment the creditor discloses in the first column of the projected payments table is the amount of the initial periodic payment disclosed pursuant to section 1026.37(b)(3) and includes the term “only interest” consistent with section 1026.37(c)(2)(i). The result of these requirements is that the interest-only payments will appear in the first column of the projected payments table. The disclosures in the projected payments table for the Loan Estimate are governed by section 1026.37(c), whether or not the transaction discloses the construction loan. Again, as a reminder, when a separate set of disclosures is used for the construction phase, that construction phase is considered a separate standalone transaction that would be treated as any other loan for purposes of the disclosures, except for applicable methods and special procedures under Appendix D that address unique aspects of the construction loan. Next slide please.

Projected Payments: Construction Phase Fixed Rate

- **Q16:** If the construction phase is disclosed separately from the permanent phase, what payments are disclosed in the second column of the Projected Payments table if the construction phase has a fixed rate?
- 12 CFR 1026.37(b)(7)(ii) – “[M]aximum amount of the balloon payment”
- 12 CFR 1026.37(c)(1)(ii)(A) – “A balloon payment that is scheduled as a final payment under the terms of the legal obligation shall always be disclosed as a separate periodic payment or range of payments”
- 12 CFR 1026.37(c)(3)(iii) – “A balloon payment that is scheduled as a final payment under the terms of the legal obligation must be disclosed under the subheading ‘Final Payment.’”
- Comment app. D-7.i – “[R]eflecting the balloon payment in the projected payments table.”



24

Thanks Nick. **If the construction phase is disclosed separately from the permanent phase, what payments are disclosed in the second column of the projected payments table if the construction phase has a fixed rate?** The balloon payments will appear in the second, in this case, last column of the projected payments table. Comment Appendix D-7.i reminds us that because the interest-only payments under the terms of the illustrated construction loan do not repay all principal, the balloon payment is reflected in the projected payments table. Under section 1026.37(c)(1)(ii)(A), a balloon payment that is scheduled as a final payment under the terms of the legal obligation is disclosed as a separate periodic payment or range of payments. In this case, the amount of the balloon payment disclosed in the second and final column of the projected payments table is the amount computed for the disclosure under section 1026.37(b)(7)(ii), which we discussed previously in question 14. Consistent with section 1026.37(c)(3)(iii), the heading for the column that discloses a balloon payment scheduled as a final payment is “final payment.” Next slide please.

Projected Payments: Construction Phase Adjustable Rate

- **Q17:** If the construction phase is disclosed separately from the permanent phase, what payments are disclosed in the first column of the Projected Payments table if the construction phase has an adjustable rate?
- 12 CFR 1026.37(c)(1)(iii) – “When a range of payments is required to be disclosed . . . the creditor must disclose the minimum and maximum amount”
- 12 CFR 1026.37(c)(2)(i) – “[I]ncluding the term ‘only interest’”
- 12 CFR 1026.37(c)(2)(i)(A) – “[T]he maximum possible interest rate and . . . the minimum possible interest rate”
- Appendix D, Part I.A – “Assume that one-half of the commitment amount is outstanding”
- Appendix D, Part I.B – “Assume that the entire commitment amount is outstanding”



25

Thanks Nick. **If the construction phase is disclosed separately from the permanent phase, what payments are disclosed in the first column of the projected payments table if the construction phase has an adjustable rate?** If the construction loan has an adjustable rate and interest-only payments, the creditor discloses in the first column of the projected payments table a range of payments consistent with section 1026.37(c)(1)(iii) and (c)(2)(i)(A). Under section 1026.37(c)(2)(i)(A) the maximum possible interest rate and the minimum possible interest rate, under the terms of the legal obligation, are applied to either one half the commitment amount or the entire commitment amount consistent with Appendix D, Part I.A or Part I.B, respectively, as we discussed earlier in question 13. The resulting amounts are entered in the first column of the projected payments table again, including the term “only interest,” consistent with section 1026.37(c)(2)(i). Keep in mind that the disclosure of the range of payments in the first column has implications for the disclosure of the balloon payment. Next slide please.

Projected Payments: Construction Balloon Payment

- **Q18:** How would a range of payments in the first column of the Projected Payments table affect disclosure of the balloon payment?
- 12 CFR 1026.37(b)(7)(ii) – “[M]aximum amount of the balloon payment . . .”
- 12 CFR 1026.37(c)(1)(ii)(A) – “A balloon payment that is scheduled as a final payment under the terms of the legal obligation shall always be disclosed as a separate periodic payment or range of payments”
- Comment 37(c)(2)(i)-3 – “[F]or a balloon payment amount that can change depending on previous interest rate adjustments that are based on the value of an index at the time of the adjustment, the balloon payment amounts are calculated using the assumptions for minimum and maximum interest rates . . . and should be disclosed as a range of payments.”

Thanks Nick. **How would a range of payments in the first column of the projected payments table affect disclosure of the balloon payment?** As Dania noted at the end of her response to question 14, if the construction loan has an adjustable rate, the required maximum amount of the balloon payment disclosed under section 1026.37(b)(7)(ii) is based upon the maximum payment of interest in the range of payments that would be disclosed in the projected payments table. Section 1026.37(c)(1)(ii)(A) requires a balloon payment that’s scheduled as a final payment under the terms of the legal obligation to be disclosed as a separate periodic payment or range of payments, and the emphasis here is on range of payments. The balloon payment disclosed in the second and final column of the projected payments table will be a range of payments when the construction loan has an adjustable rate. This is because the balloon payment amount can change depending upon whether the final monthly interest payment that is included in the final balloon payment is the maximum or minimum amount of the monthly interest payment. Comment 37(c)(2)(i)-3 specifically notes that a balloon payment amount can change depending on previous interest rate adjustments and, in such case, will be disclosed as a range of payments. The balloon payment range disclosed is the loan amount plus the minimum payment on the low-end of the range, and the loan amounts plus the maximum amount of the interest payment on the high-end of the range that’s disclosed in the first column of the projected payments table. As Dania referenced in her response to question 14, if the construction loan has an adjustable rate, the maximum amount of balloon payments disclosed under section 1026.37(b)(7)(ii) is the maximum payment in the range of payments disclosed for the balloon payment in the second and final column of the projected payments table. Next slide please.

Projected Payments: Single, Combined Disclosure

- **Q19:** How are the disclosures in the Projected Payments table made if the creditor is using a single set of disclosures for both the construction phase and the permanent phase?
- Comment 37(a)(8)-1.i
- Comment app. D-7.ii – “If the creditor elects to disclose the construction and permanent phases as a single transaction, the repayment schedule must be disclosed pursuant to appendix D, part II.C.2. Under appendix D, part II.C.2, the projected payments table must reflect the interest-only payments during the construction phase in a first column, followed by the appropriate column(s) reflecting the amortizing payments for the permanent phase. The creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part II.A.1.”



27

Thanks Nick. Dania, on **slide 27** we have another question for you related to the projected payments table. **How are the disclosures in the projected payments table made if the creditor is using a single set of disclosures for both the construction phase and the permanent phase?** If the creditor elects to disclose the construction and permanent phases as a single transaction, the projected payments table must reflect the interest-only payments during the construction phase in the first column followed by an appropriate column or columns reflecting the amortizing payments for the permanent phase, as explained in comment Appendix D-7.ii. Let's consider this comment with an example that fits the illustration provided, and then we'll change the example to demonstrate how Appendix D and its commentary are to be read in conformance with the provisions of the integrated disclosure rule. If the interest-only construction phase is 12 months, the first column of the projected payments table discloses the initial periodic principal and interest payment, if the construction phase has a fixed rate. If the construction phase has an adjustable rate, the creditor discloses a range of payments. The permanent phase periodic payment or range of payments is disclosed in up to three additional columns, depending on whether the permanent phase has a fixed or an adjustable rate. Next slide please.

Projected Payments: Single, Combined Disclosure; Not a Whole Number of Years

- **Q20:** Is the single, combined construction-to-permanent disclosure for projected payments different if the construction phase does not equal a whole number of years?
- 12 CFR 1026.37(c)(1)(iii)(B) – “A range of payments is required to be disclosed under this paragraph (c)(1) when: . . . (B) Multiple events described in paragraph (c)(1)(i)(A) of this section occur during a single year or an event described in paragraph (c)(1)(i)(A) of this section occurs during the same year as the initial periodic payment or range of payments, in which case the creditor discloses the range of payments that would apply during the year in which the events occur”
- 12 CFR 1026.37(c)(2)(i)
- Comment 37(c)(1)(i)(A)-3 – “In a loan that contains an interest only feature, periodic principal and interest payments may change for purposes of § 1026.37(c)(1)(i)(A) when the interest only period ends, meaning the consumer must begin making payments that do not defer repayment of principal.”
- Comment app. D-7.ii



28

Thanks Dania. **Is the single, combined construction-to-permanent disclosure for projected payments different if the construction phase does not equal a whole number of years?** Yes. Let's change the example from the previous question so that the construction phase is six months instead of one full year. The first applicable provision we consider is comment 37(c)(1)(i)(A)-3, which states that in a loan that contains an interest-only feature periodic principal and interest payments may change when the interest-only period ends. This commonly describes what happens in our example when the interest-only periodic payment ends after six months, and the payment of principal and interest begins in month seven. Next, we consider section 1026.37(c)(1)(iii)(B), which provides that a range of payments is required to be disclosed if the periodic principal and interest payment or range of such payments may change during the same year as the initial periodic payment or range of payments. As a reminder, the term “principal and interest payment” includes interest-only payments if the payment or range of payments include interest-only payments pursuant to section 1026.37(c)(2)(i). In our example, there will be a change during the same year as the initial interest-only periodic payment, when the payment of principal and interest begins in month seven. Read together, comment 37(c)(1)(i)(A)-3 and section 1026.37(c)(1)(iii)(B) require the creditor to disclose in the first column of the projected payments table a range of payments reflecting both the six-month interest-only construction phase and the six months of the principal and interest payments under the permanent phase that begins in month seven. Although comment Appendix D-7.ii provides that the projected payments table must reflect the interest-only payment during the construction phase in the first column, it does not limit that first column exclusively to interest-only payments, and the disclosure rules may require that both the interest-only construction phase payments and the principal and interest permanent phase payments be disclosed in the first column. Next slide please.

Loan Estimate – Page 1 – Projected Payments Table

Projected Payments											
Payment Calculation											
Principal & Interest											
Mortgage Insurance											
Estimated Escrow <i>Amount can increase over time</i>											
Estimated Total Monthly Payment											
Estimated Taxes, Insurance & Assessments <i>Amount can increase over time</i>	<table border="0"> <thead> <tr> <th>This estimate includes</th> <th>In escrow?</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> Property Taxes</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Homeowner's Insurance</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Other:</td> <td></td> </tr> <tr> <td colspan="2"><i>See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.</i></td> </tr> </tbody> </table>	This estimate includes	In escrow?	<input type="checkbox"/> Property Taxes		<input type="checkbox"/> Homeowner's Insurance		<input type="checkbox"/> Other:		<i>See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.</i>	
This estimate includes	In escrow?										
<input type="checkbox"/> Property Taxes											
<input type="checkbox"/> Homeowner's Insurance											
<input type="checkbox"/> Other:											
<i>See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.</i>											



Thanks Dania. As you can see on **slide 29**, we have the projected payments table that we are discussing. Let's consider a question related to the projected payments table and the disclosures for mortgage insurance and estimated escrow. Next slide please.

Projected Payments: Mortgage Insurance and Estimated Escrow Disclosure

- **Q21:** What does a creditor disclose for mortgage insurance and estimated escrow for a construction loan?
- Comments 37(c)(2)(ii)-1 – “If the consumer is not required to purchase mortgage insurance or any functional equivalent, the creditor discloses the mortgage insurance premium amount as ‘0.’”
- Comment 37(c)(2)(ii)-2 – “The creditor discloses mortgage insurance premiums . . . on the same periodic basis that payments for principal and interest are disclosed . . . even if mortgage insurance premiums are actually paid on some other periodic basis.”
- Comment 37(c)(2)(iii)-1 – “If no escrow account for the payment of some or all such charges will be established, the creditor discloses the escrow amount as ‘0.’”

Nick, **what does a creditor disclose for mortgage insurance and estimated escrow for a construction loan?** The answer will depend upon what the creditor requires under the terms of the legal obligation. If mortgage insurance will not be required and an escrow account will not be established for either the construction phase or the permanent phase, the creditor discloses zero in the appropriate rows and columns of the projected payments table, consistent with comments 37(c)(2)(ii)-1 and 37(c)(2)(iii)-1. This disclosure is not impacted by whether each phase of a construction-to-permanent loan is disclosed separately or both phases are disclosed together. If mortgage insurance is not required for the construction phase but is required for the permanent phase and a single disclosure is provided, the creditor discloses zero in the first column of the projected payments table, if the first column exclusively discloses the interest-only payments of the construction phase. If the first column discloses both the construction phase interest-only payments and the permanent phase principal and interest payments, the amount of the mortgage insurance premium computed in accordance with comment 37(c)(2)(ii)-2 is disclosed in the first column, because the mortgage insurance premium payments would commence in the period covered by the first column. Comment 37(c)(2)(ii)-2 requires mortgage insurance premiums to be disclosed on the same periodic basis that payments for principal and interest are disclosed, even if mortgage insurance premiums are actually paid on some other periodic basis. Next slide please.

Projected Payments: Mortgage Insurance and Estimated Escrow Disclosure Differences

- **Q22:** How can the escrow projected payments disclosure differ from the mortgage insurance disclosure?
- Comment 37(c)(2)(iii)-1 – “If an escrow account is established . . . but no escrow payment is required with a particular periodic payment . . . or range of payments, the escrow payment should be disclosed as ‘—.’”



31

Thanks Nick. **How can the escrow projected payments disclosure differ from the mortgage insurance disclosure?** If an escrow account is not established for the construction phase but is established for the permanent phase and a single disclosure covering both phases is provided, the creditor discloses a hyphen or dash in the first column of the projected payments table, if the first column exclusively discloses the interest-only payments of the construction phase. In contrast to the disclosure for the mortgage insurance payment, which would be zero, comment 37(c)(2)(iii)-1 provides that if an escrow account is established but no escrow payment is required with a particular periodic payment or range of payments, the escrow payment should be disclosed as a hyphen or dash. In the case described here, an escrow payment would not be required during the interest-only construction phase that is exclusively disclosed in the first column, and so the conditions required for the disclosure of a hyphen or dash are present. For the same reasons discussed in question 21 related to mortgage insurance, if the first column discloses both the construction phase interest-only payments and the permanent phase principal and interest payments, the escrow payment is disclosed in the first column, because the escrow payments would commence in the period covered by the first column. Next slide please.

Projected Payments: Estimated Taxes, Insurance, and Assessments – In Escrow?

- **Q23:** How does a creditor disclose whether the estimated taxes, insurance, and assessments will be in escrow?
- 12 CFR 1026.37(c)(4)(iv) – “A statement of whether the amount disclosed pursuant to paragraph (c)(4)(ii) of this section includes payments for property taxes, amounts identified in § 1026.4(b)(8), and other amounts described in paragraph (c)(4)(ii) of this section, along with a description of any such other amounts, and an indication of whether such amounts will be paid by the creditor using escrow account funds”



32

Thanks Nick. The next few questions are for Dania. **How does a creditor disclose whether the estimated taxes, insurance, and assessments will be in escrow?** If a single disclosure is made for both phases and there will be an escrow account only during the permanent phase, the creditor discloses “yes” to indicate that these items will be in escrow, consistent with section 1026.37(c)(4)(iv). If however the disclosures for the construction phase and permanent phase are made separately and an escrow account will be established for the permanent phase but not for the construction phase, the disclosure for the construction phase is “no,” and the disclosure for the permanent phase is “yes.” Next slide please.

Projected Payments: Estimated Taxes, Insurance, and Assessments – Calculation

- **Q24:** How does a creditor calculate the amount of estimated taxes, insurance, and assessments in the Projected Payments table when those amounts may change due to the construction of a dwelling?
- 12 CFR 1026.37(c)(4)(ii) – “The sum of the charges identified in § 1026.43(b)(8), other than amounts identified in § 1026.4(b)(5), expressed as a monthly amount, even if no escrow account for the payment of some or any of such charges will be established”
- 12 CFR 1026.37(c)(5) – “[E]stimated property taxes and homeowner’s insurance shall reflect: (i) The taxable assessed value of the real property securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, if known, whether or not such construction will be financed from the proceeds of the transaction, for property taxes; and (ii) The replacement costs of the property during the initial year after the transaction, for amounts identified in § 1026.4(b)(8).”
- Comment 17(c)(2)(i)-1
- Comment 19(e)(1)(i)-2



Thanks Dania. And for our final question on projected payments - **How does a creditor calculate the amount of the estimated taxes, insurance, and assessments in the projected payments table when those amounts may change due to the construction of a dwelling?** The creditor discloses estimates based on the best information reasonably available at the time of the disclosure, consistent with comment 17(c)(2)(i)-1 and 19(e)(1)(i)-2. As a reminder, the reasonably available standard requires the creditor acting in good faith to exercise due diligence in obtaining the information. Under section 1026.37(c)(5)(i) the amount of the estimated property taxes to be disclosed for all close-end consumer credit transactions secured by real estate, including construction loans, must reflect the taxable assessed value of the real property securing the transaction after consummation. This includes the value of any improvements on the property or to be constructed on the property if known, irrespective of whether the construction will be financed from the proceeds of the loan. Under section 1026.37(c)(5)(ii), the disclosed estimated homeowners insurance must reflect the replacement cost of the property during the initial year after the transaction. Under section 1026.37(c)(4)(ii), the estimated taxes and homeowners insurance must be disclosed as a monthly amount even if no escrow account is established. Next slide please.

Loan Costs and Other Costs: Inspection and Draw Fees

- **Q25:** How does a creditor disclose inspection and draw fees when the creditor does not know how many draws there will be?
- 12 CFR 1026.37(f)
- Comment 17(c)(2)(i)-1 – “Information is unknown if it is not reasonably available to the creditor at the time the disclosures are made. The ‘reasonably available’ standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information”
- Comment 19(e)(1)(i)-2 – “These disclosures must be provided in good faith. Except as otherwise provided in § 1026.19(e), a disclosure is in good faith if it is consistent with § 1026.17(c)(2)(i)”



34

Thanks Dania. That concludes our questions related to page 1 of the Loan Estimate. Moving to page 2 of the Loan Estimate and **slide 34. How does a creditor disclose inspection and draw fees when the creditor does not know how many draws there will be?** As in the preceding question, the creditor is required to make the disclosure based on the best information reasonably available to the creditor at the time the disclosure is made. Certain unique fees and charges can be associated with the construction phase of a construction-to-permanent loan. These fees generally fall into the categories of inspection fees and handling or draw fees. Such fees are considered loan costs under section 1026.37(f), which requires the disclosure of all loan costs associated with the transaction. Inspection and draw fees may be collected at or before consummation. Where construction financing is involved, a creditor may not know the actual schedule of inspections or draws for purposes of disclosing the inspection and draw fees at consummation. When a creditor is uncertain about the actual amount of a particular cost, as comments 17(c)(2)(i)-1 and 19(e)(1)(i)-2 explain, the creditor is held to the best information reasonably available standard, which requires a creditor acting in good faith to exercise due diligence to obtain the information. For example, a creditor may base estimates of inspection and draw fees for a particular transaction on past experience with other transactions of similar scope and complexity. Next slide please.

Loan Costs and Other Costs: Construction Holdbacks

- **Q26:** How may a creditor disclose a “construction holdback” on the Loan Estimate?
- 12 CFR 1026.37(g)(4) – “[A]ny other amounts in connection with the transaction that the consumer is likely to pay or has contracted with a person other than the creditor or loan originator to pay at closing and of which the creditor is aware at the time of issuing the Loan Estimate”
- Comment 37(g)(7)-1 – Clear and conspicuous standard (see comment 37(f)(5)-1)
- Comment 37(f)(5)-1 – “[T]erminology that is clear and conspicuous . . . and describes the service or administrative function that the charge pays for in a manner that is reasonably understood by consumers”



35

Thanks Dania. Nick, the next question on **slide 35** asks: **How may a creditor disclose a “construction holdback” on the Loan Estimate?** A creditor has options for disclosing a feature that may be called a “construction holdback,” as long as the disclosure reflects the terms of the legal obligation. The term “construction holdback” is not a defined term and does not even appear in Regulation Z. Further, as is often the case, undefined terms may be used in different ways by different persons. To avoid any misunderstanding that may be based on the meaning of “construction holdback,” I won’t use that terminology. Instead, I’ll discuss disclosure of a portion of loan proceeds placed in or designated to a reserve or other accounts at consummation. For an example of the kind of arrangement I’m discussing, let’s assume the loan is for construction costs only with no purchase or refinance involved. If the loan amount is for \$100,000 and the creditor designates \$10,000 of the loan proceeds to a reserve or other account, the creditor is not required to separately disclose the \$10,000 because this amount is not an additional cost imposed on the consumer. It is a portion of the overall loan proceeds. The creditor may disclose this designated amount as a separate itemized cost, along with the separate itemized costs for the balance of the construction costs in accordance with section 1026.37(g)(4) in section H of the Loan Estimate, which provides for an itemization of any other amounts in connection with the transaction that the consumer is likely to pay at closing or that the consumer has contracted with a person other than the creditor or loan originator to pay at closing. The designated amount may be labeled “construction holdback,” if that is what it is called under the terms of the legal obligation. Or, if the designated amount is not given a specific label in the legal obligation, it may be labeled in a way that meets the clear and conspicuous standard explained in comment 37(f)(5)-1. The construction costs, including the designated amount, are costs that the consumer contracts at closing to pay. In our example, the designated amount of \$10,000 and the balance of the construction costs of \$90,000 may be disclosed separately as other costs in section H on page 2 of the Loan Estimate, or a single amount of \$100,000 may be disclosed as the construction costs without additionally disclosing the designated amount. If the designated amount is disclosed

separately, the balance of the construction costs must exclude the designated amount to avoid double counting. Next slide please.

Loan Costs and Other Costs: Construction Holdbacks – Alternative Disclosure

- **Q27:** Is there an alternative to disclosing a “construction holdback” and construction costs in the “other” category at section H of the Loan Estimate?
- 12 CFR 1026.37(h)(1)(ii) – “The amount of any closing costs to be paid out of loan proceeds, disclosed as a negative number”
- 12 CFR 1026.37(h)(1)(v) – “[D]etermined by subtracting the principal amount of the credit extended (excluding any amount disclosed pursuant to paragraph (h)(1)(ii) of this section) from the total amount of all existing debt being satisfied in the transaction (except to the extent the satisfaction of such existing debt is disclosed under paragraph (g) of this section)”
- Comment 37(h)(1)(ii)-1 – “[D]etermined by subtracting the estimated total amount of payments to third parties not otherwise disclosed pursuant to § 1026.37(f) and (g) from the total loan amount disclosed pursuant to § 1026.37(b)(1).”



36

Thanks Nick. One related follow-up question. **Is there an alternative to disclosing a “construction holdback” and construction costs in the “other” category at section H of the Loan Estimate?** Yes. Although, again as in the previous answer, “construction holdback” is not a defined term and does not even appear in Regulation Z. Instead I’ll discuss disclosure of a portion of loan proceeds placed in or designated to a reserve or other account at consummation. If the creditor does not disclose the designated amount or construction costs as an “other cost” in section H, the entire construction costs, including the designated amount, is factored into the “calculating cash to close” table in accordance with section 1026.37(h)(1)(ii). Comment 37(h)(1)(ii)-1 explains that the amount of closing costs financed that is disclosed is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed pursuant to section 1026.37(f) and (g) from the total loan amount disclosed pursuant to section 1026.37(b)(1). To parse this provision out, if the designated amounts or construction costs are not otherwise disclosed pursuant to section 1026.37(g), they are included in the estimated total amount of payments to third parties that are subtracted from the total loan amount to calculate the closing costs financed. The construction costs, including the designated amount if not disclosed under section H of the Loan Estimate, would also be factored into the “calculating cash to close” table calculation under section 1026.37(h)(1)(v) funds for borrower and included in the total amount of all existing debt being satisfied in the transaction. Done in this way, the calculation results in the accurate disclosure of the estimated cash to close that the consumer may expect to be responsible for at closing. Next slide please.

AP Table: Single Combined Disclosure, Adjustable Rate

- **Q28:** How is the Adjustable Payment (AP) table completed if a construction-to-permanent loan disclosed as a single transaction with one set of disclosures includes both interest-only payments for some period and an adjustable rate?
- 12 CFR 1026.37(i)(1) – “Whether the transaction is an interest only product . . . of this section as an affirmative or negative answer to the question ‘Interest Only Payments?’ and, if an affirmative answer is disclosed, the period during which interest only periodic payments are scheduled.”
- 12 CFR 1026.37(i)(5)(i) – “The number of the payment of the first periodic principal and interest payment that may change under the terms of the legal obligation . . . counting from the first periodic payment due after consummation, and the amount or range of the periodic principal and interest payment for such payment, labeled ‘First Change/Amount’”
- 12 CFR 1026.37(i)(5)(iii) – “The maximum periodic principal and interest payment that may occur during the term of the transaction, and the first periodic principal and interest payment that can reach such maximum, counting from the first periodic payment due after consummation, labeled ‘Maximum Payment.’”
- Comment 37(i)(5)-3 – “If the frequency of adjustments to the periodic payment may change under the terms of the legal obligation, the disclosure should state the smallest period of adjustments that may occur. ”



37

Thanks Nick. Now we're going to move on to some questions about the adjustable payment and adjustable interest rate tables. Looking at **slide 37**, Dania, **How is the adjustable payment table or AP table completed if a construction-to-permanent loan disclosed as a single transaction, with one set of disclosures, includes both interest-only payments for some period and an adjustable rate?** If the creditor chooses to disclose a construction-to-permanent loan as a single transaction with one set of disclosures, the adjustable payment or AP table must be disclosed because the transition from interest-only payments to payments of principal and interest will always be present. Even if the transaction has an adjustable rate and a corresponding payment change based on the rate change, the AP table must be disclosed because there will be a payment change after consummation that will not be based on a change to the interest rate. When a construction-to-permanent loan is disclosed as a single transaction, the adjustable payment table is disclosed consistent with section 1026.37(i), as it would be for any other loan, while using Appendix D's assumption to compute the interest-only periodic payment. For example, if the interest-only period during the 12-month construction phase has a rate that adjusts monthly, the disclosure for whether there are interest-only payments, as required under section 1026.37(i)(1), must state “yes” for your first 12 payments, and under section 1026.37(i)(5)(i), the monthly principal and interest payments disclosure labeled “first change or amount” must disclose the range of minimum and maximum payments that will be made at the second payment. The subsequent payment disclosure, according to comment 37(i)(5)-3, states the smallest period of adjustments that may occur, which, in this case, is disclosed as every payment. For purposes of determining the maximum payment disclosed under section 1026.37(i)(5)(iii), the first payment under the construction phase, which is the first payment of the combined transaction, is counted as the first periodic principal and interest payment. In conclusion, if the construction and permanent phases have fixed rates or adjustable rates or one phase is fixed and the other is adjustable, the principle to keep in mind is that the loan is considered a

single transaction, and the creditor follows the disclosure rules as in section 1026.37(i). Next slide please.

Adjustable Interest Rate (AIR) Table: Single Combined Disclosure, Different Fixed Rates

- **Q29:** Does the creditor include the Adjustable Interest Rate (AIR) table when a creditor discloses a construction-to-permanent loan with a single set of disclosures and each phase has a different fixed rate?
- 12 CFR 1026.37(j) – “If the interest rate may increase after consummation, a separate table . . . under the heading ‘Adjustable Interest Rate (AIR) Table’”
- Comment 37(j)-1 – “The disclosure described in § 1026.37(j) is required only if the interest rate may increase after consummation, either based on changes to an index or scheduled changes to the interest rate.”



38

Thanks Dania. Next, for Nick we have two questions about the adjustable interest rate or AIR table on slides 38 and 39. First on **slide 38, Does the creditor include the adjustable interest rate or AIR table when a creditor discloses a construction-to-permanent loan with a single set of disclosures and each phase has a different fixed rate?** Yes. As you will recall from our discussion of question six, if the creditor uses a single set of disclosures and the construction phase has one fixed rate or the permanent phase has a different fixed rate, the creditor discloses the product as a “step rate” product. A step rate product has scheduled changes to the interest rate and is covered by the adjustable interest rate or AIR table requirement under section 1026.37(j). Comment 37(j)-1 specifically provides that the adjustable interest rate disclosure is required only if the interest rate may increase after consummation, either based on changes to an index or scheduled changes to the interest rate. Next slide please.

AIR Table: Permanent Phase Rate Not Known

- **Q30:** What does the creditor disclose in the Adjustable Interest Rate (AIR) table if the creditor does not know the interest rate for the permanent phase of a construction-to-permanent loan?
- 12 CFR 1026.37(b)(2) – “The interest rate that will be applicable to the transaction at consummation”
- 12 CFR 1026.37(j)(3) – “The interest rate at consummation of the loan transaction”
- Comment 37(b)(2)-1 – “[I]f the index value that will be in effect at consummation is unknown at the time the disclosures are provided . . . the fully-indexed rate disclosed . . . may be based on the index in effect at the time the disclosure is delivered.”



39

Thanks Nick, and, **What does the creditor disclose in the adjustable interest rate or AIR table if the creditor does not know the interest rate for the permanent phase of a construction-to-permanent loan?** As we previously discussed, to address situations where any information necessary for an accurate disclosure is unknown to the creditor, the creditor is required to make the disclosure based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. This general principle applies to the initial interest rate disclosure in section 1026.37(j)(3) as well. Section 1026.37(j)(3) requires the disclosure of the interest rate at consummation of the loan transaction, which is essentially the same as the required disclosure under section 1026.37(b)(2). Because the integrated disclosure rule provides no reason to treat these two disclosures differently, the same considerations may be made when determining what interest rate to disclose for the permanent phase. When separate disclosures are made for the construction phase and the permanent phase, the interest rate disclosed for the permanent phase will depend on whether the permanent phase has an adjustable rate or a fixed rate. If the permanent phase has an adjustable rate, the rate disclosed under section 1026.37(b)(2) and (j)(3) is the fully indexed rate, which is the interest rate calculated using the index value and margin at the time of consummation. This is specifically provided for under section 1026.37(b)(2), if the interest rate at consummation is not known. Even though payment may not begin for months after consummation, the disclosure is consistent with section 1026.37(b)(2). As a reminder, if the index value and margin that will apply at the time of consummation are not known at the time the disclosure must be made, comment 37(b)(2)-1 provides that the fully indexed rate disclosed may be based on the index in effect at the time the disclosure is delivered. Next slide please.

Comparisons: Total of Payments

- **Q31:** How are the total principal, interest, mortgage insurance, and loan costs (total of payments) calculated when the construction phase is 12 months or less and is disclosed as a separate transaction?
- 12 CFR 1026.37(l)(1)
- Comment 37(l)(1)(i)-1 – “In transactions with a scheduled loan term of less than 60 months, to comply with § 1026.37(l)(1), the creditor discloses the amounts paid through the end of the loan term.”



40

Thanks Nick. Our last two questions are for Dania and relate to two disclosures on page 3 of the Loan Estimate. **How are the total principal, interest, mortgage insurance, and loan costs, which are sometimes called the total of payments, calculated when the construction phase is 12 months or less and is disclosed as a separate transaction?** Comment 37(l)(1)-1 directly addresses this question and provides that in transactions with the loan term of less than 60 months or five years, the creditor discloses the amounts paid through the end of the loan term. Here, that would be the full amount of the total principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the construction phase. This would be disclosed in the comparisons table using the label “in five years.” Next slide please.

Comparisons: Total Interest Percentage (TIP)

- **Q32:** How is the Total Interest Percentage (TIP) calculated for the construction phase?
- 12 CFR 1026.37(l)(3) – “The total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended, using the term ‘Total Interest Percentage,’ the abbreviation ‘TIP,’ and the statement ‘The total amount of interest that you will pay over the loan term as a percentage of your loan amount.’”
- Comment 37(l)(3)-2 – “For Adjustable Rate products under § 1026.37(a)(10)(i)(A), § 1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with comment 17(c)(1)-10.”
- Comment 17(c)(1)-10



41

Thanks Dania, and for our final question for today: **How is the total interest percentage, which is sometimes called the TIP, calculated for the construction phase?** The total interest percentage or TIP is not limited to any specific time period. Section 1026.37(l)(3) requires disclosure of the total amount of interest that the consumer will pay over the life of the loan expressed as a percentage of the amount of credit extended. This percentage is the result of dividing the total interest to be paid by the loan amount. Again, for the construction phase of the construction-to-permanent loan, the interest amount is based on the applicable Appendix D assumption for the outstanding balance to which the contract interest rate applies. Although Appendix D is silent on which interest rate applies, comment 37(l)(3)-2 provides that for adjustable rate products the creditor computes the total interest percentage according to comment 17(c)(1)-10. Comment 37(l)(3)-2 also provides that for step rate products the creditor computes the total percentage in accordance with section 1026.17(c)(1) and its associated commentary. This approach to calculating interest would also apply when computing the TIP for a construction-to-permanent transaction disclosed as a single transaction when each phase has a different fixed-rate. Next slide please.

Additional CFPB Resources

- **Dedicated Regulatory Implementation Website:**
 - <http://www.consumerfinance.gov/regulatory-implementation/tila-respa/>
 - If you are interested in receiving notices about regulatory implementation you may sign up for our mailing list by entering your email address in the space provided in the upper right hand corner of the dedicated regulatory implementation website.
- **eRegulations Tool:**
 - <http://www.consumerfinance.gov/eregulations>



42

Thanks Dania. This concludes the questions for today. This last slide tells you where you can find additional resources or submit additional questions related to the integrated disclosure rule. If you sign up for our email updates, we will let you know when we post additional resources to our regulatory implementation webpage. Thank you to everyone for participating in this webinar. Now, I will turn it back over to Mike.

All right thank you; so just pushed out the survey. You just saw that pop up in the webinar tool. We're going to send the same survey out via email. Please do just fill it out in one place. If you are interested in that CPE credit, you will definitely need to fill out that survey, as well as be registered prior to this session. That's how you will get that credit.

We have a ton of great questions that came in. All of those are going to be logged and will impact future presentations. With that said, I would like to thank you all for joining us today. A special thank you to our presenters and the Outlook Live team for their time. Quick reminder, check the website at www.consumercomplianceoutlook.org. It will highlight this call and a bunch of other great materials. Have a great day everyone.