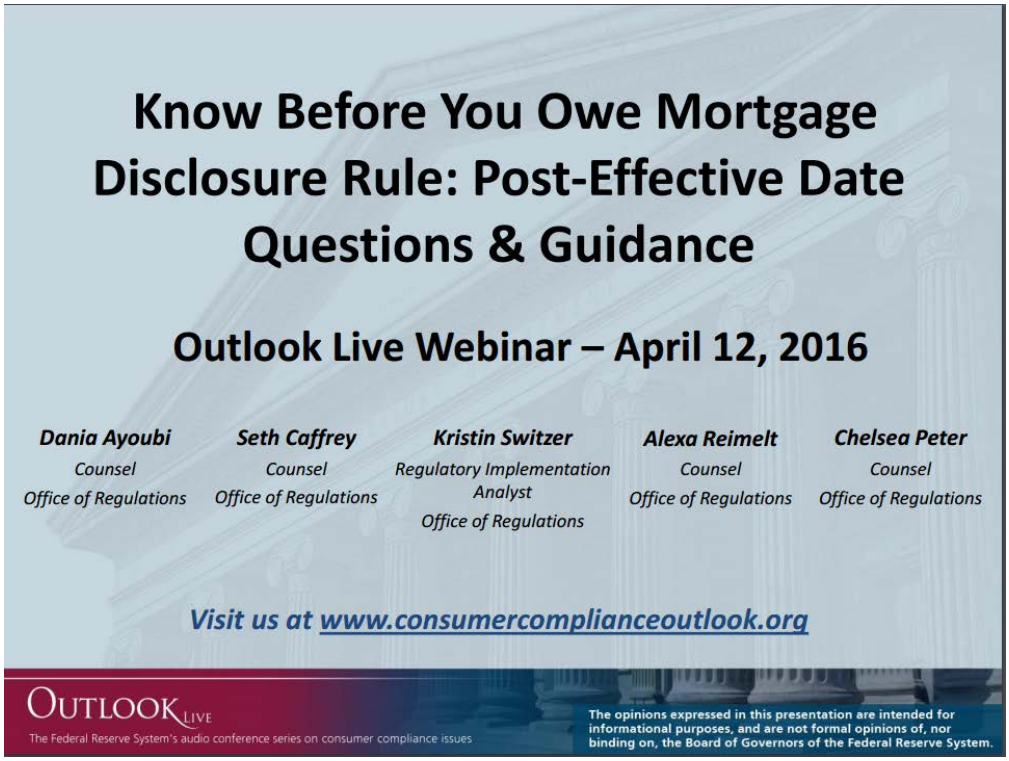
Outlook Live Webinar

Know Before You Owe Mortgage Disclosure Rule
Post-Effective Date Questions and Guidance

Tuesday, April 12, 2016

Transcript provided by BuckleySandler LLP[1]



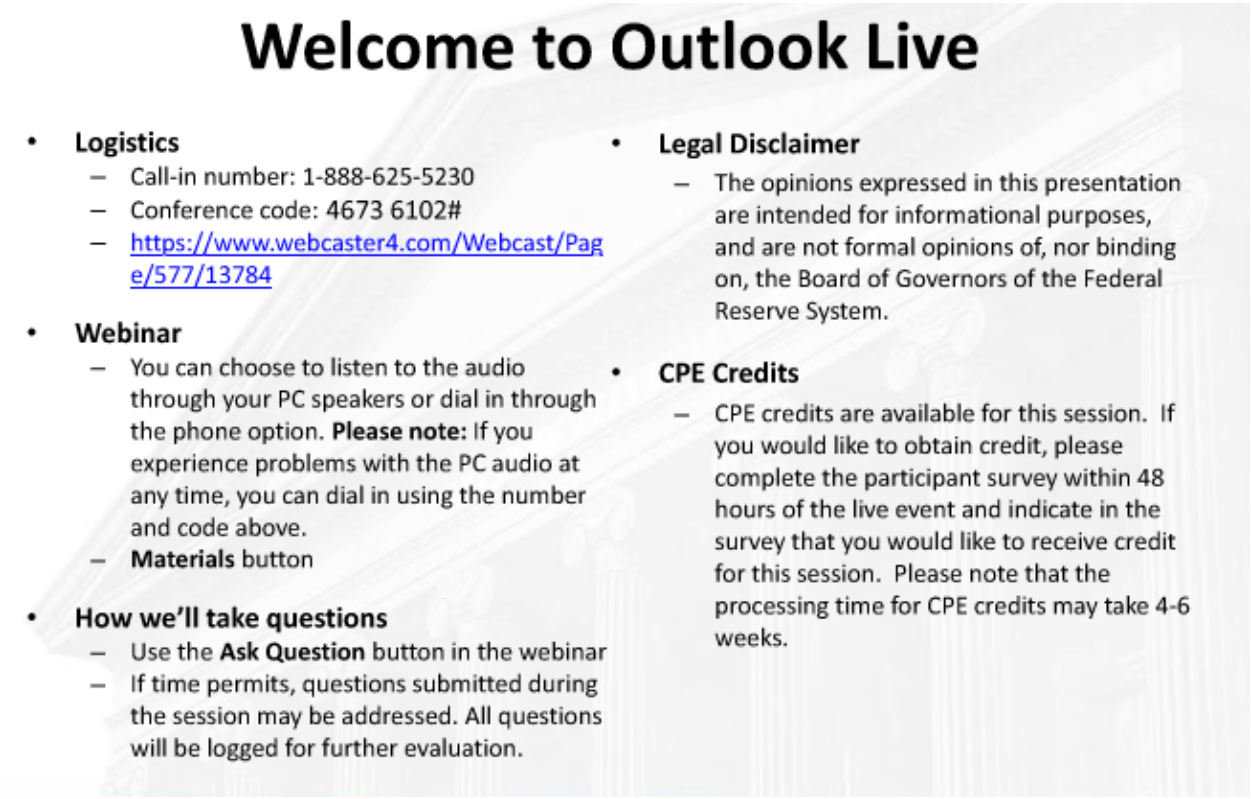
[1] The audio recording and original slides are available at: https://consumercomplianceoutlook.org/outlook-live/2016/know-before-you-owe-mortgage-disclosure-rule-post-effective-date-questions-guidance/. The transcript was prepared from the audio recording provided by the Federal Reserve Board and may have minor inaccuracies due to sound quality. In addition, the transcript has not been reviewed by the CFPB or the Federal Reserve for accuracy or completeness. This transcript inserts an image of the slide that corresponds to the discussion, but all insertions are approximate. This transcript also revises citations for clarity and for consistency with the Code of Federal Regulations where necessary (e.g., "Section 1026.19(f)(4)(i)" instead of "1026.19(f)(4)(1)").

KAREN: Okay, Jean, the floor is yours.

MS. ROARK: Thank you, Karen. Good afternoon and welcome to Outlook Live. I'm Jean Roark with the Federal Reserve, and I'll be your facilitator.

Today, we'll explore the Know Before You Owe Mortgage Disclosure Rule Post-Effective Date Questions and Guidance.

Let me start with a big thank you to our presenters. We'll be hearing from them in a moment, but first let's jump to slide 2 and cover some logistics.



If you haven't done so yet, click on the webinar link you received after registering, or you can head over to our website at www.consumercomplianceoutlook.org. There, you can find the session materials and, eventually, the archive of our call.

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 have a limited number of lines available.

As for questions, we won't have time to answer them on the call today, but you can submit them for future consideration by clicking on the "Ask Question" button in the webinar.

I would also like to point out something new to the Outlook Live program. We're offering continuing professional education credits for attending the session. If you're interested in that,

you must do two things. First, be registered for this session; and, second, you must complete the post session survey.

Let's cover some legal language real quick. 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.

And with that said, we're ready to get started. I'll turn it over to CFPB's Kristin Switzer.

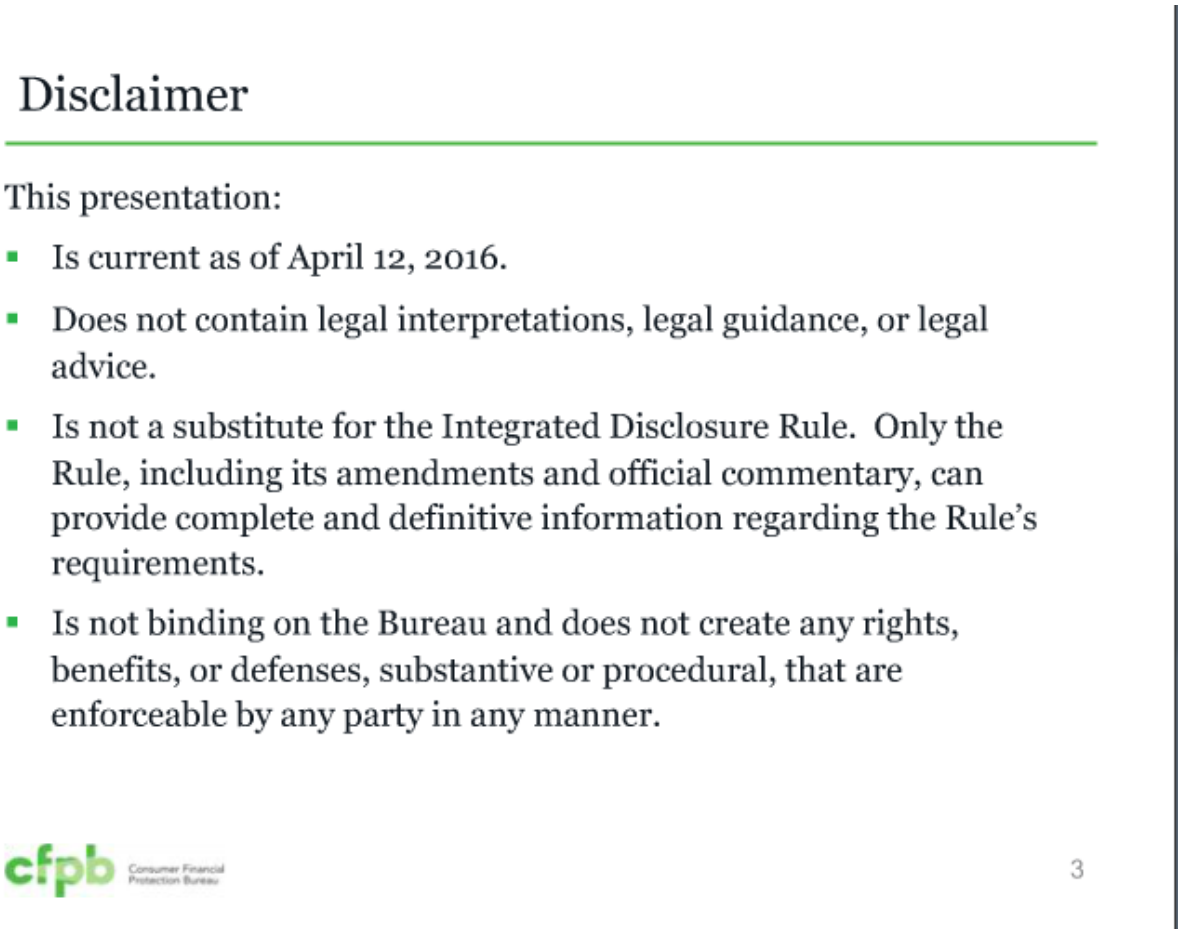
MS. SWITZER: Thanks, Jean.

Good afternoon and welcome to the Bureau's webinar on the Integrated Disclosure Rule. My name is Kristin Switzer, with the Bureau's regulatory implementation team, and joining me from the Office of Regulations are my colleagues Dania Ayoubi, Seth Caffrey, Alexa Reimelt, and Chelsea Peter.

Today's webinar will focus on common questions related to the interpretation and implementation of the rule's requirements that various stakeholders have raised since the rule took effect in October of last year.

The general format will be similar to that of previous webinars that we have presented on the Integrated Disclosure Rule. To facilitate the content, we will use slides that display the question as well as both citations and portions of the regulatory text and commentary relevant to the discussion being presented.

This webinar will be recorded, and we'll provide a link to the recording along with an index of the questions that we address today on the Bureau's implementation web page for the rule so that you can continue to use the content as a resource in the future.



The disclaimer on slide 3 includes language that you have likely seen before. It serves as a reminder that the rule, including commentary, speaks for itself. We have attempted to ensure that the contents of this webinar are accurate, but if anything is inconsistent with the rule, the text of the regulation and commentary prevails. We cannot amend the rule through a webinar but only through notice and comment rule making.

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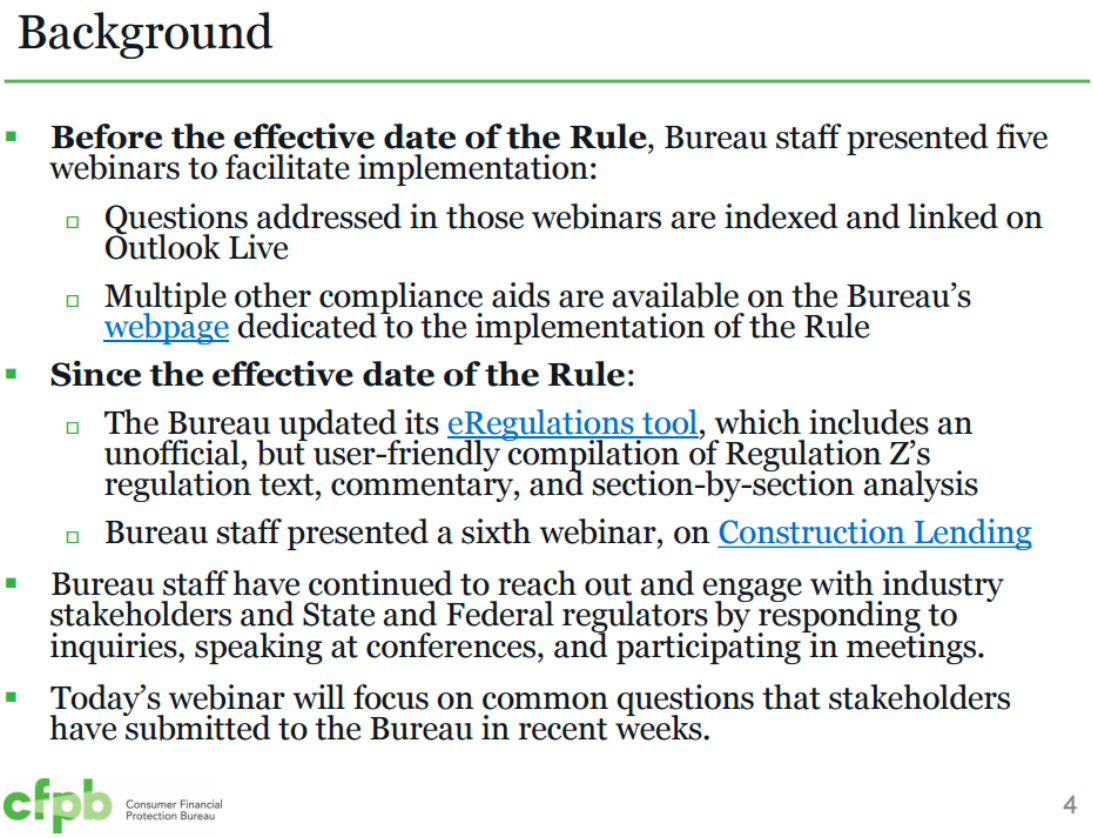

On slide 4, we discuss some of the implementation resources that have been made available to date. Many of you tuned in to one or more of the five earlier webinars that the Bureau presented leading up to the effective date of the rule as well as to the recent March 1st webinar on construction lending. You can access these webinars on the Bureau's implementation web page for the rule.

In addition to the webinars, the Bureau has developed a number of tools to facilitate implementation, including a compliance guide, sample forms, publications such as "Your Home Loan Toolkit and Closing Fact Sheet," and "A Guide for Real Estate Professionals." We also invite you to sign up for our mailing list to receive notices on new implementation materials and efforts.

Also on slide 4, we have included a link to our eRegulations tool. This tool includes Regulation Z, where the Integrated Disclosure Rule is codified, and was created to help users more easily read, understand, and navigate the Bureau's regulations by organizing and linking related regulatory text and background information.

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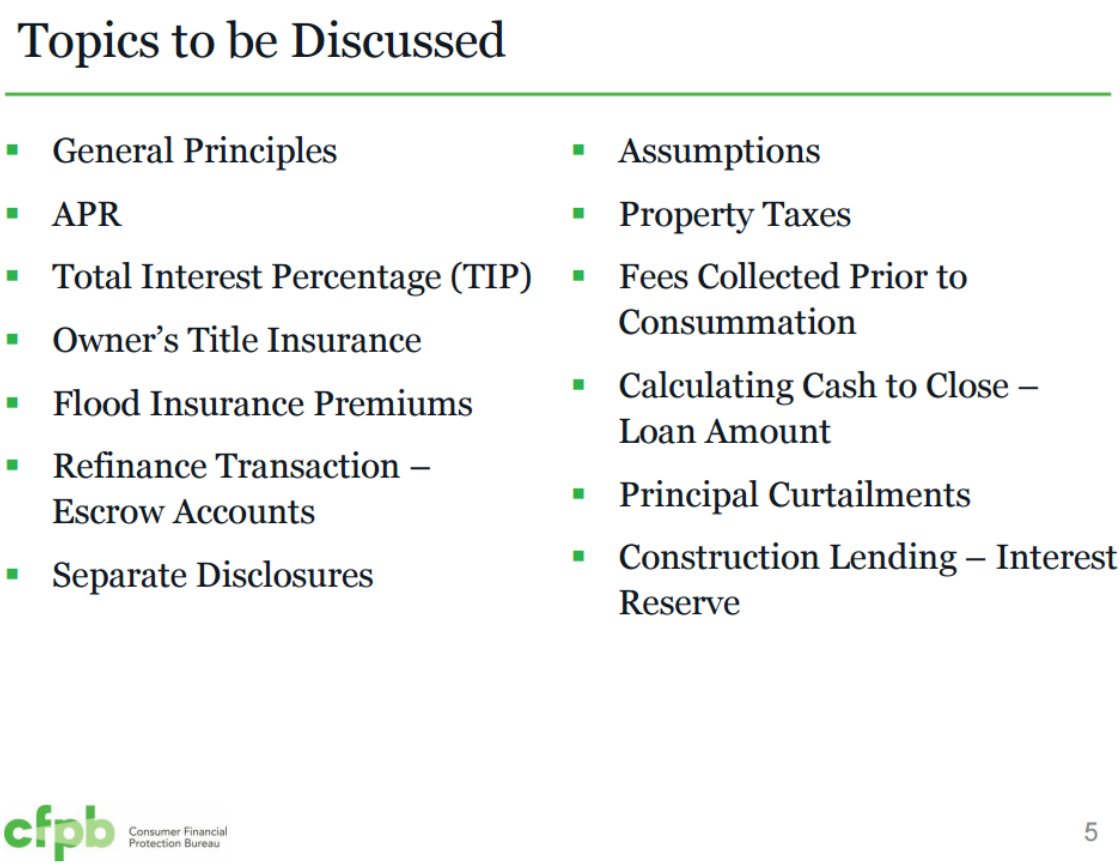

Slide 5 includes a list of the general topics that we will be discussing today. It is not possible for us to answer in this webinar every question that we have received since the effective date of the rule. However, today we will cover some general principles for you to analyze and apply to your particular facts and disclosure questions.

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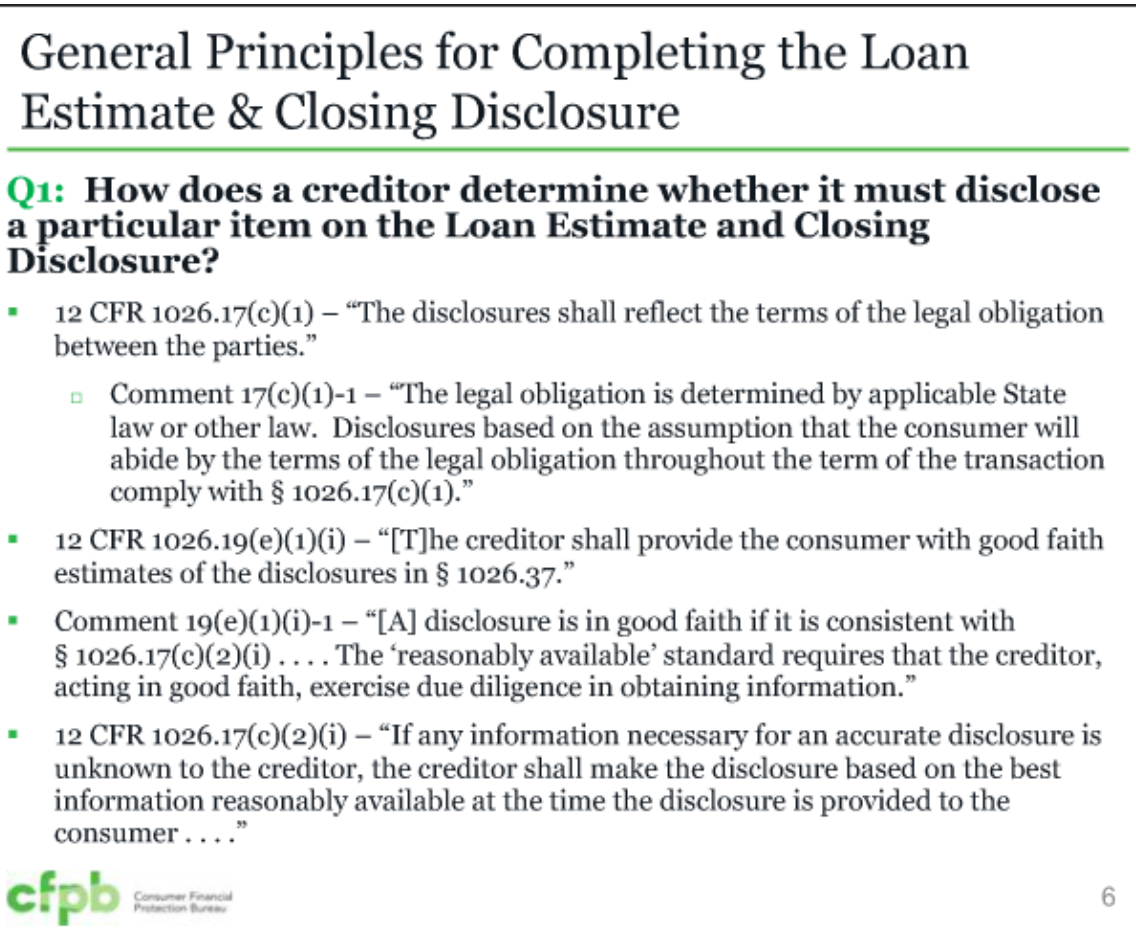

So with that, we'll begin with question number 1 on slide 6. We have received many different questions asking whether certain charges need to be disclosed to the consumer. Dania, can you please explain how a creditor can determine whether it must disclose a particular item on the Loan Estimate and Closing Disclosure?

MS. AYOUBI: Whether the rule requires a creditor to disclose a charge on the Loan Estimate or Closing Disclosure will depend significantly on what the terms of the legal obligation are between the creditor and the consumer. A creditor should keep in mind that the Mortgage Disclosure Rule is codified as part of Regulation Z, which implements the Truth in Lending Act. Therefore, the requirements of Regulation Z generally continue to apply with regard to the Loan Estimate and Closing Disclosure unless otherwise specifically stated within Regulation Z.

In approaching the requirements for completing the Loan Estimate and Closing Disclosure, a creditor must pay close attention to the terms of the legal obligations between the creditor and the consumer.

As required by Section 1026.17(c)(1), the disclosures must reflect the terms of the legal obligation between the parties. Here that means the agreement between the creditor and the consumer. In making the required disclosures, the creditor should assume that the consumer will conform to the terms of the legal obligation throughout the term of the transaction. At the Loan

Estimate stage, the applicable legal obligation is the loan that the consumer has applied for. At the Closing Disclosure stage, the applicable legal obligation is the credit transaction that the consumer and creditor will consummate.

As explained in Section 1026.19(e)(1)(i), a creditor is required to provide the consumer with good faith estimates of each item disclosed on the Loan Estimate. And when it comes to the Closing Disclosure, a creditor must provide the consumer with the disclosures that reflect the actual terms of the transaction. This analysis is highly dependent upon the facts and circumstances of the terms of the agreement between the creditor and the consumer.

Comment 19(e)(1)(i)-1 explains that if any information necessary for an accurate disclosure is unknown to the creditor, a disclosure is in good faith if it is based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. The reasonably available standard requires that a creditor, acting in good faith, exercise due diligence in obtaining information. Under this standard, the terms of the legal obligation between the creditor and the consumer continue to be the primary consideration, but the terms of the purchase contract between the buyer and the seller may be relevant if information about those terms is reasonably available to the creditor.

Based on these guiding principles, more practically, in determining whether a charge must be disclosed, a creditor considering the terms of its agreement with the consumer first determines whether the rule establishes specific requirements for how to disclose an item. If the rule does not establish specific requirements, a creditor next considers whether the rule provides flexibility in disclosing an item. For example, does the rule prohibit disclosing an item in the manner the creditor is contemplating? A creditor should also keep in mind that, where appropriate, considering the purpose of the rule, in several instances, including some of which we'll discuss in the questions presented later in this webinar, a creditor is afforded flexibility with respect to how to disclose an item.

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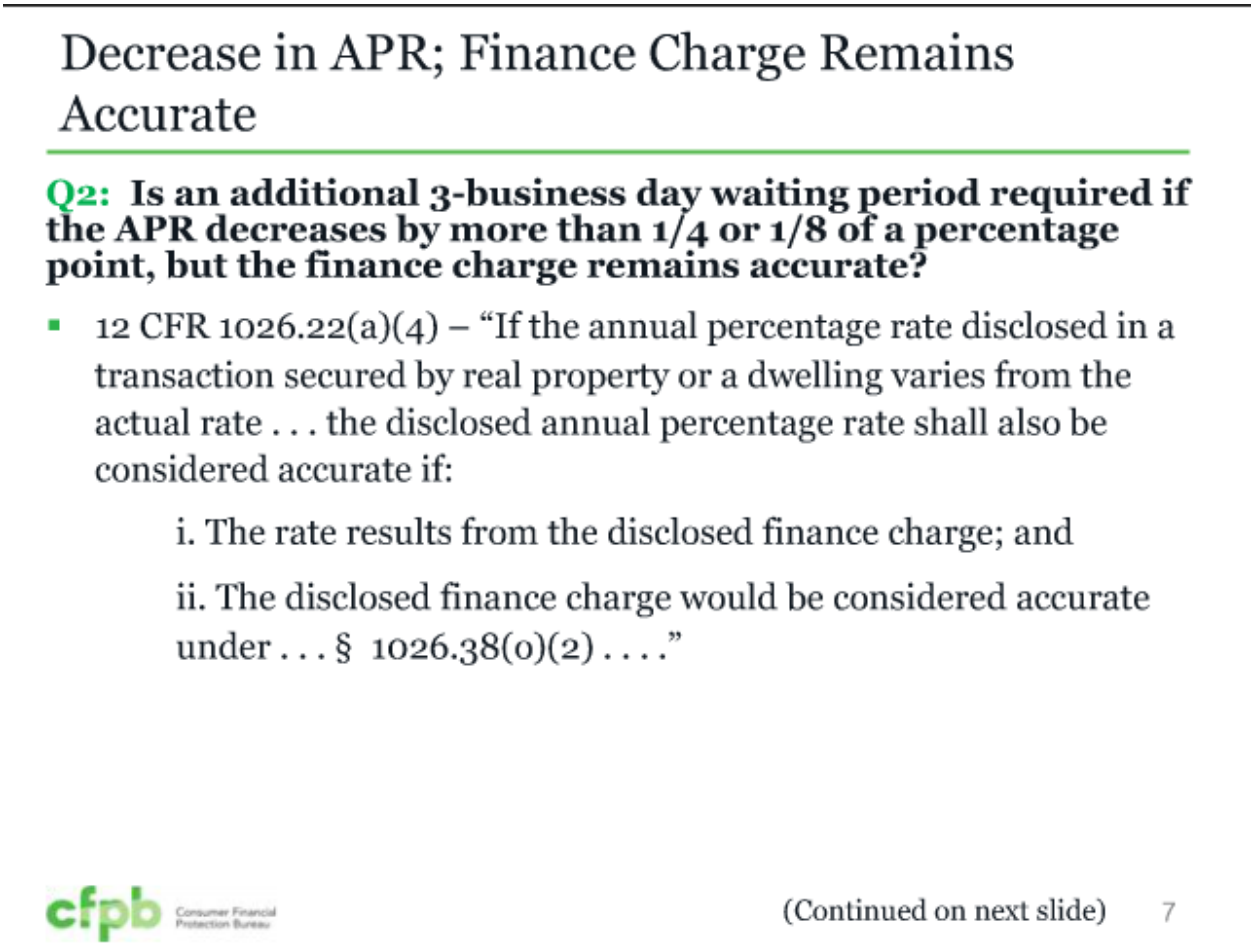

MS. SWITZER: Thanks, Dania. That is a helpful reminder of the basic disclosure considerations as we get into more specific questions.

We've received quite a few questions regarding APR accuracy and the need for an additional three-business-day waiting period. Alexa, can you please tell us, is an additional three-business-day waiting period required if the APR decreases by more than a quarter or an eighth of a percentage point but the finance charge remains accurate?

MS. REIMELT: An APR would be considered accurate and a new three-business-day waiting period would not be required if the APR directly corresponds to a disclosed finance charge that is considered accurate. The APR tolerance rules are covered in Section 1026.22, and it's important to note that the rule did not change these requirements.

Section 1026.22(a)(4) contains special APR accuracy rules for mortgage loans and explains that in addition to the quarter or eighth of a percentage point tolerance for accuracy, the disclosed APR is also considered accurate if the rate results from the disclosed finance charge and the disclosed finance charge would be considered accurate.

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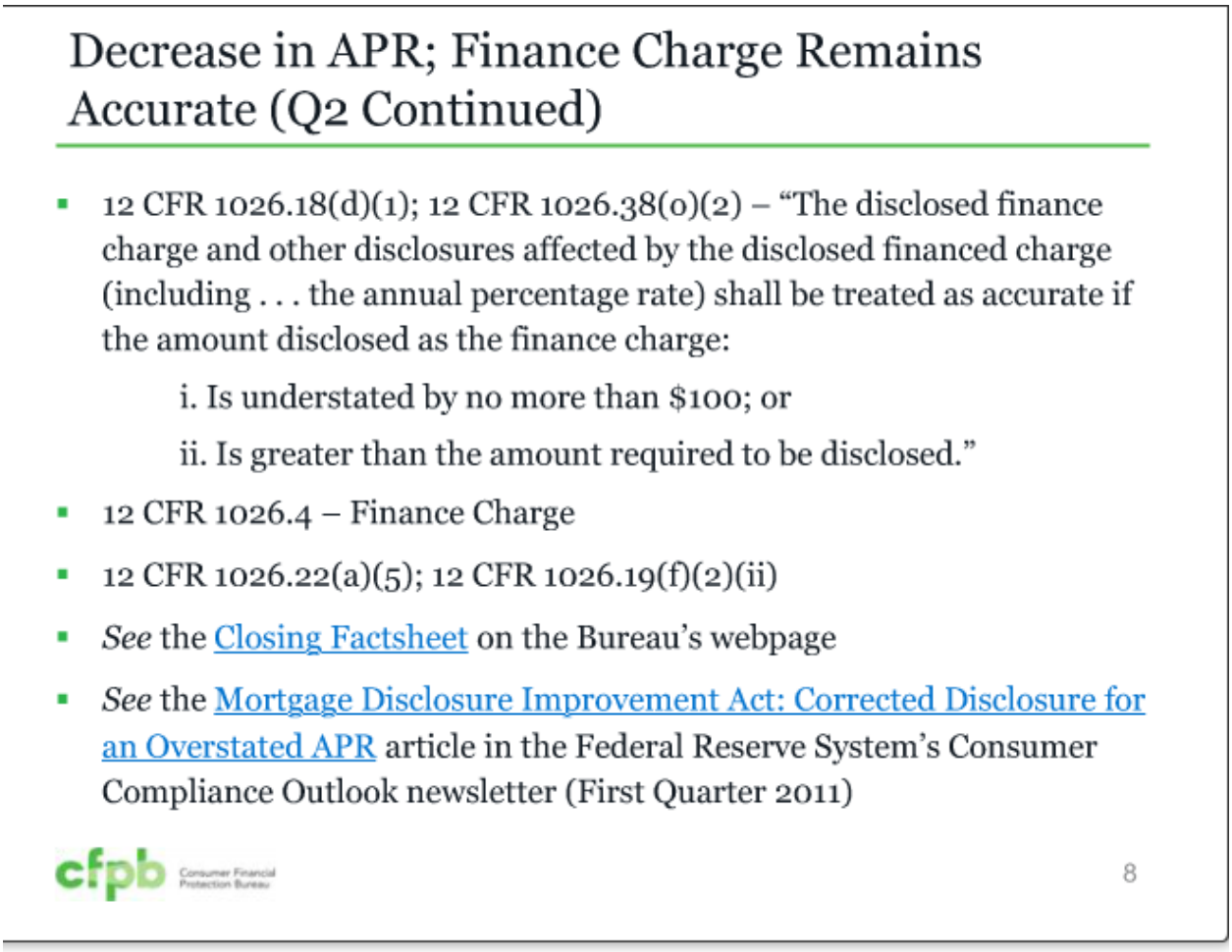

The tests for determining whether a finance charge is considered accurate are in Sections 1026.18(d)(1) and 1026.38(o)(2) and explain that the disclosed finance charge shall be treated as accurate if it is understated by no more than $100 or is greater than the amount required to be disclosed. Thus, as a general matter, an overstated finance charge is treated as accurate if it is understated by no more than $100 or is greater than the amount required to be disclosed. Thus, as a general matter, an overstated finance charge is treated as accurate.

The finance charge is defined under Section 1026.4 as the cost of consumer credit disclosed as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or condition of the extension of credit. Some examples of finance charges include interest, points, and loan fees. The rule did not change the definition of finance charge under TILA.

Because an overstated finance charge is treated as accurate, an overstated APR that corresponds directly to an overstated finance charge would be considered accurate, and an additional three-business-day waiting period would not be required. So, in that case, consummation could proceed as scheduled. But remember that not every overstatement of an APR is caused by an

overstated finance charge. There may be situations where a decrease in APR would trigger the new three-business-day waiting period, and consummation would be delayed.

For example, if the finance charge was not overstated on the Closing Disclosure but the APR was overstated or decreased after issuance of the Closing Disclosure for reasons unrelated to the finance charge, then the creditor would have to evaluate the accuracy of the APR with reference to the APR tolerances and not the finance charge tolerances. Similarly, if the disclosed APR exceeds the APR that directly corresponds to the overstated finance charge, the creditor could not rely on the finance charge tolerances.

In both of these examples, if the disclosed APR exceeded the actual APR by more than one quarter or one eighth of a percentage point, it would be inaccurate under Section 1026.22, and redisclosure with a new three-business-day waiting period is required by TILA.

Don't forget that there's an additional APR tolerance for mortgage loans at Section 1026.22(a)(5), which provides that an overstated or understated APR may also be accurate if the disclosed APR is closer to the actual APR than an APR calculated based on the disclosed finance charge would be.

I would also note that in the August 2014 webinar, we discussed APR accuracy under Section 1026.22 and changes before consummation requiring an additional three-business-day waiting period under Section 1026.19(f)(2)(ii). I encourage our listeners to review those materials.

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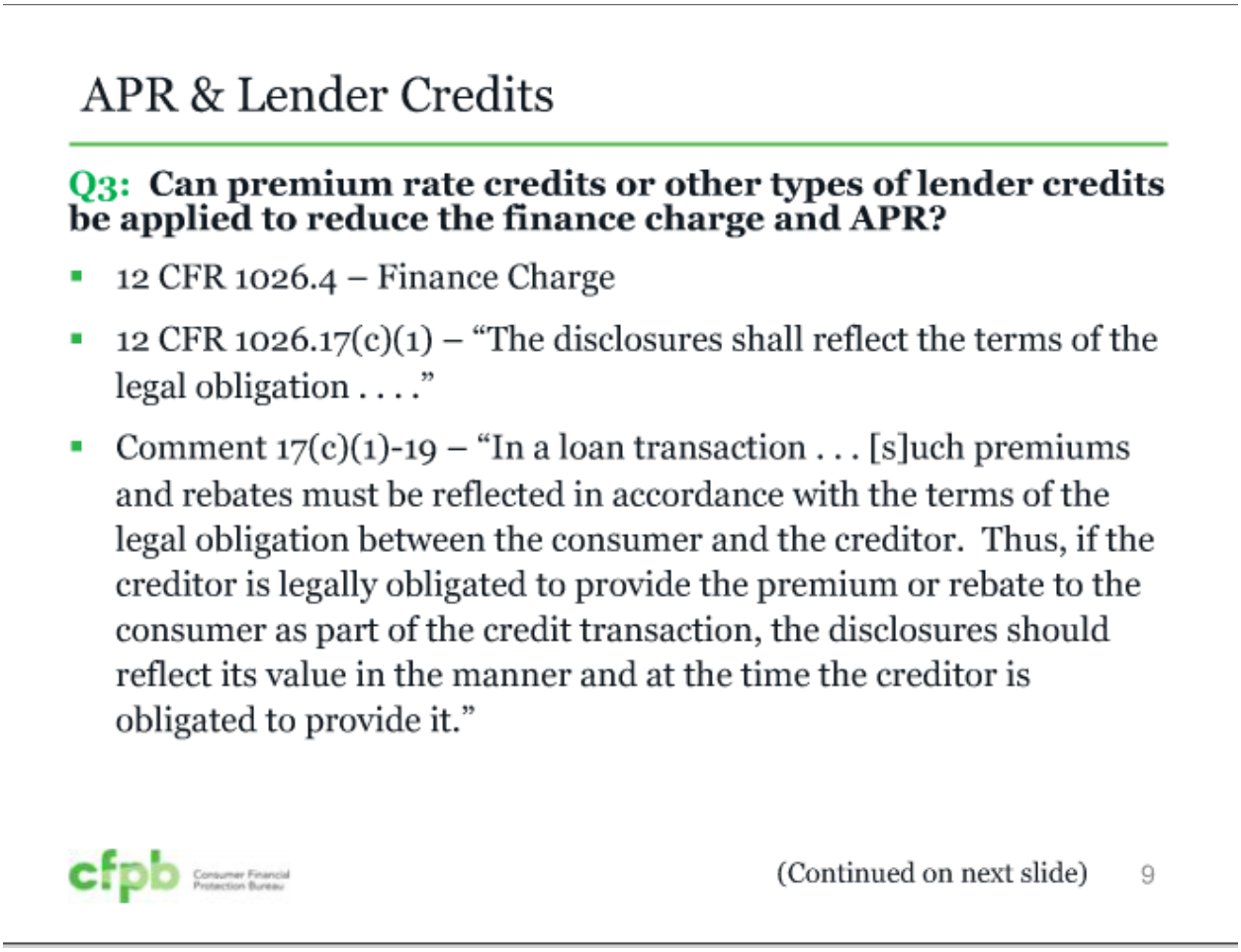

MS. SWITZER: Thanks, Alexa. To follow up on the discussion of the finance charge and APR, we have a question on slide 9 about the effect of lender credits on the finance charge and APR. Specifically, can premium rate credits or other types of lender credits be applied to reduce the finance charge and APR?

MS. REIMELT: A creditor may apply premium rate credits or other types of lender credits to reduce the finance charge and APR only in a manner consistent with the terms of the legal obligation. As a reminder, it's important to note that the rule did not change the definition of finance charge under Section 1026.4, nor did it change the method for calculating the APR under Appendix J.

As we discussed in response to question 1, Section 1026.17(c)(1) requires that the disclosures reflect the terms of the legal obligation between the creditor and the consumer. So if the creditor provides a lender credit, the terms of the legal obligation determine whether the credit may be applied to reduce the finance charge and the APR. For example, if a specific lender credit is applied to a finance charge, such as an origination fee, under the terms of the legal obligation, then the specific lender credit would reduce the finance charge and APR.

Comment 17(c)(1)-19 specifically addresses the disclosure of rebates and loan premiums and explains that if a creditor offers a rebate or premium to the consumer, those rebates and premiums must be reflected according to the terms of the legal obligation between the consumer and the creditor. So if the creditor is legally obligated to provide the premium or rebate to the consumer as part of the credit transaction, the disclosures must reflect the premium or rebate value in the manner and at the time the creditor is obligated to provide it.

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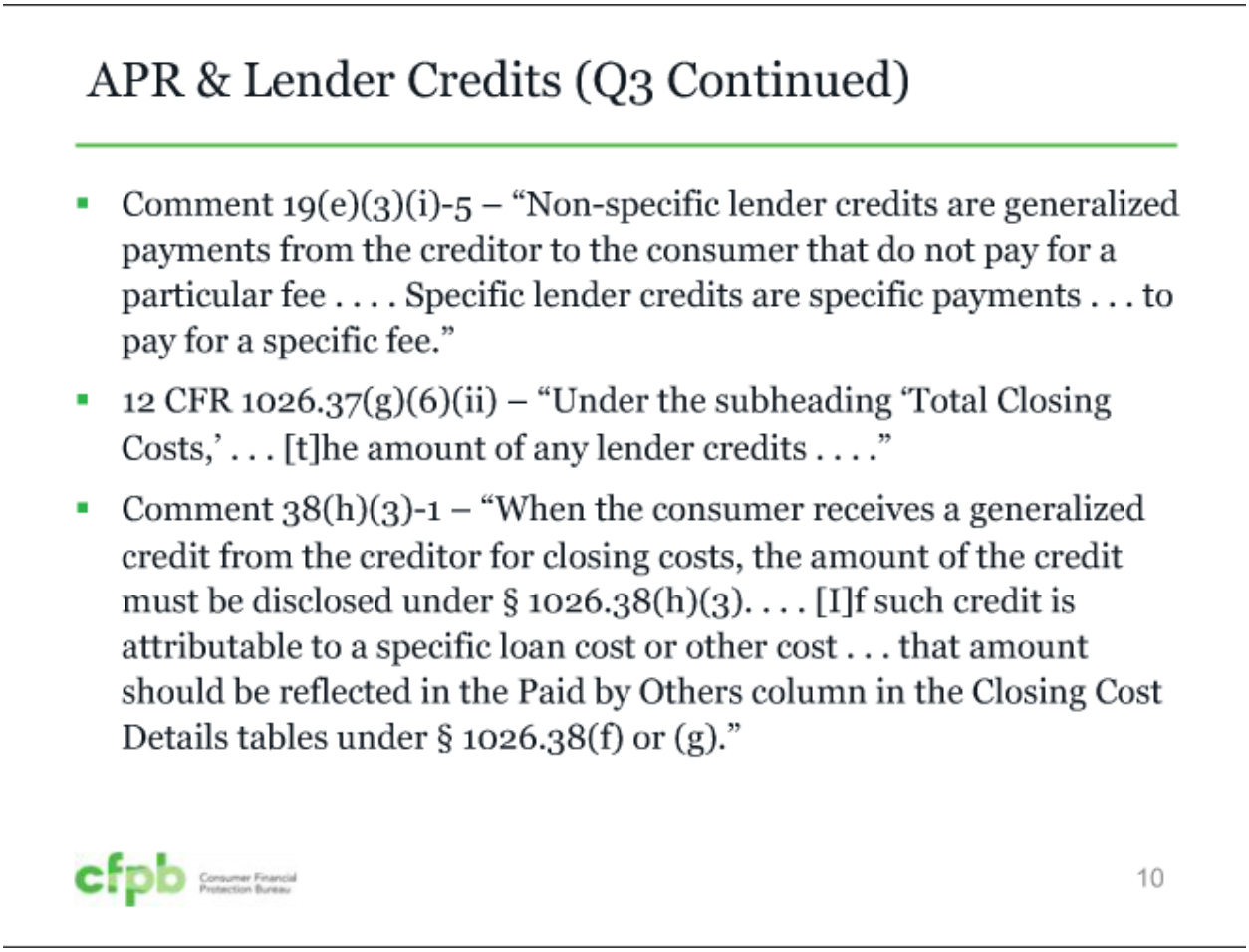

The rule offers guidance on the difference between nonspecific or general lender credits and specific lender credits. Comment 19(e)(3)(i)-5, set forth on slide 10, explains that nonspecific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee, while specific lender credits are payments from the creditor to the consumer to pay for a specific fee.

On the Loan Estimate, the sum of nonspecific and specific lender credits are disclosed under total closing costs as lender credits under Section 1026.37(g)(6)(ii) on page 2 of the Loan Estimate. On the Closing Disclosure, Comment 38(h)(3)-1 explains that general lender credits must be disclosed under total closing costs under Section 1026.38(h)(3), while lender credits

attributable to a specific loan cost or other cost should be reflected in the "Paid By Others" column on the closing cost details tables on page 2 of the Closing Disclosure.

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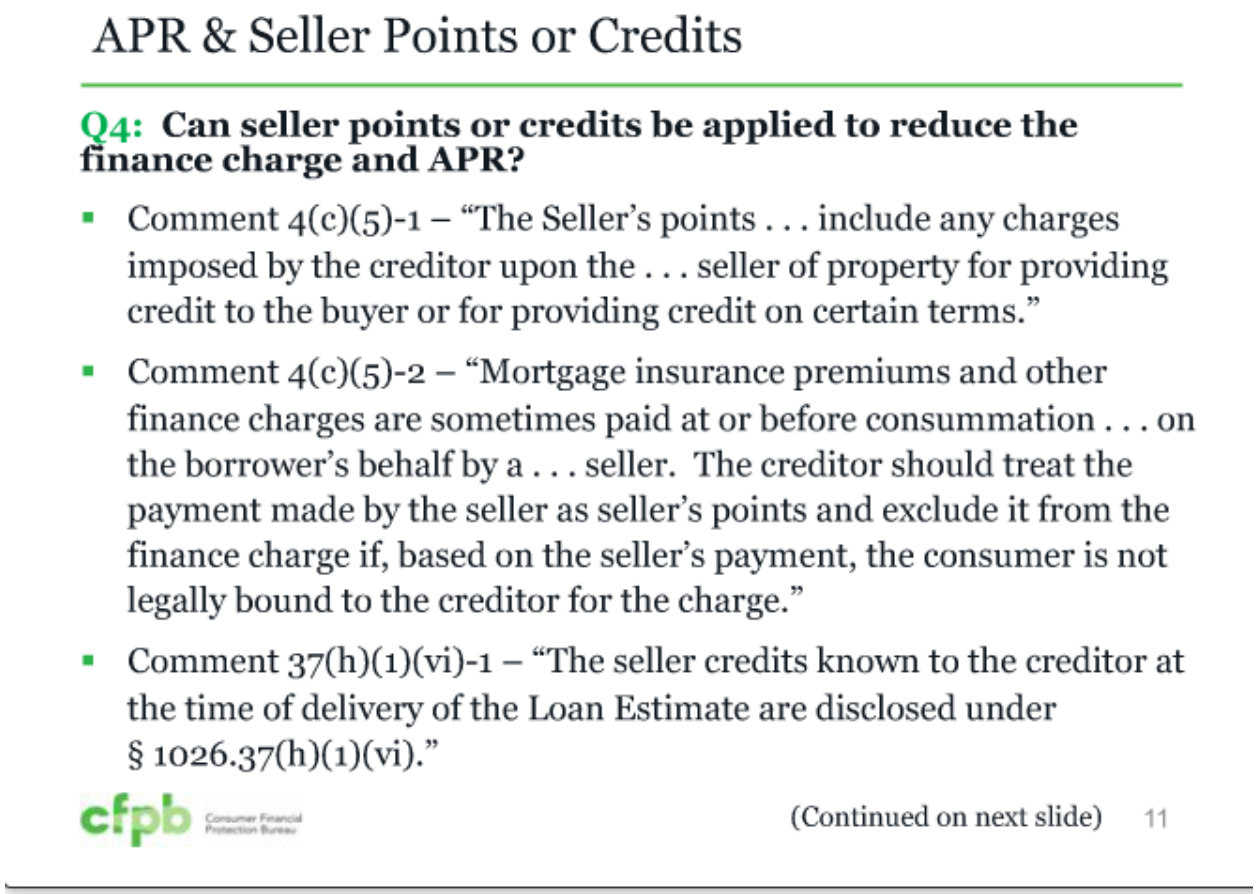

MS. SWITZER: Thanks, Alexa. Could you clarify whether seller points or credits can be applied to reduce the finance charge and APR?

MS. REIMELT: Seller points or seller credits may reduce the finance charge and the APR, but, again, this depends on how the seller points or credits are applied pursuant to the terms of the legal obligation. Seller points are amounts paid by the seller to the creditor pursuant to a contract between the seller and the creditor.

The treatment of seller points and the finance charge calculation is governed by Comments 4(c)(5)-1 and 4(c)(5)-2 set forth on slide 11. Comment 4(c)(5)-1 explains that seller points include any charges imposed by the creditor on the noncreditor seller of property for providing credit to the buyer or for providing credit on certain terms. These charges are excluded from the finance charge even if they are passed on to the buyer, for example, in the form of a higher sales price.

Comment 4(c)(5)-2 explains that mortgage insurance premiums and other finance charges are sometimes paid at or before consummation by the seller on the borrower's behalf. The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if, based on the seller's payment, the consumer is not legally bound to the creditor for the charge. So to the extent that under the terms of the legal obligation the seller is paying fees that would otherwise be finance charges, such as mortgage insurance, Comment 4(c)(5)-2 provides that those fees are excluded from the finance charge.

Seller credits is a broader term that could, but may not necessarily, include seller points. As with lender credits, Comment 38(j)(2)(v)-1 notes that seller credits may be paid as a lump sum or itemized to pay for a specific cost.

Seller credits known to the creditor at the time the Loan Estimate is delivered are generally disclosed on the "Calculating Cash to Close" table, as explained in Comment 37(h)(1)(vi)-1 on page 2 of the Loan Estimate.

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APR & Seller Points or Credits (Q4 Continued)

- 12 CFR 1026.38(j)(2)(v) – "Under the heading 'Summaries of Transactions,' . . . labeled 'Paid Already by or on Behalf of Borrower at Closing' . . . [t]he total amount of money that the seller will provide at the real estate closing as a lump sum . . . ."
- Comment 38(j)(2)(v)-1 – "When the consumer receives a generalized credit from the seller for closing costs . . . the amount of the credit must be disclosed [in the Summaries of Transactions table]. However, if the seller credit is attributable to a specific loan cost or other cost listed in the Closing Cost Details tables . . . that amount should be reflected in the seller-paid column in the Closing Cost Details tables under § 1026.38(f) or (g)."

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On the Closing Disclosure, lump sum seller credits should be disclosed in the "Summaries of Transactions" table as an amount already paid by or on behalf of a borrower under Section 1026.38(j)(2)(v) on page 3 of the Closing Disclosure.

Comment 38(j)(2)(v)-1 provides that when seller credits are attributable to a specific loan cost or other cost, the amount of the credit should be reflected in the "Seller Paid" column in the "Closing Cost Details" tables on page 2 of the Closing Disclosure.

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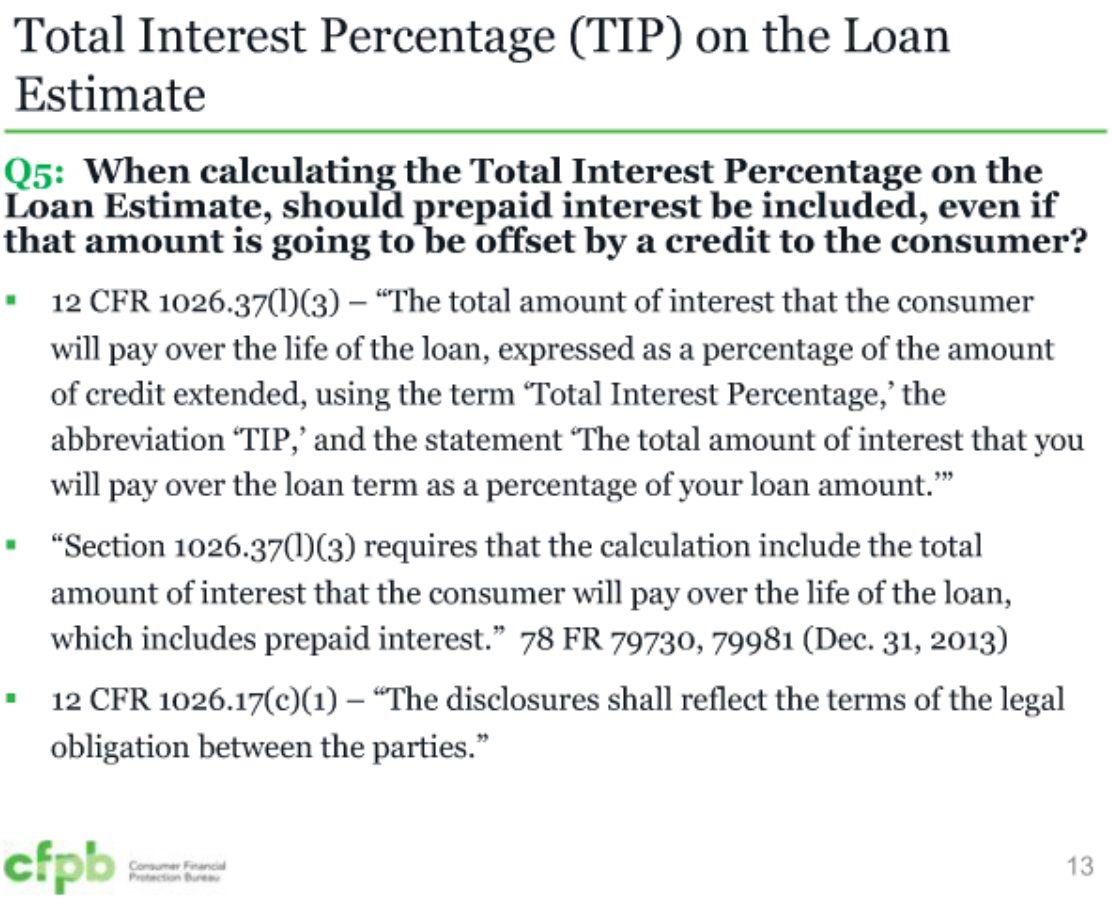

MS. SWITZER: Thanks, Alexa. The next question on slide 13 is for Chelsea. On a related topic, when calculating the total interest percentage, sometimes called the TIP, on the Loan Estimate, should prepaid interest be included even if that amount is going to be offset by a credit to the consumer?

MS. PETER: The answer will depend on the specific terms of the transaction. Interest, including prepaid interest, is included in the calculation of the total interest percentage, or TIP, except to the extent it can be established that the consumer will not pay the prepaid interest. The TIP is disclosed under the "Comparisons" table on page 3 of the Loan Estimate.

Section 1026.37(l)(3) governs this calculation and 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.

In response to comments received on the proposed rule, the Bureau's preamble discussion in the final rule specifically provides that prepaid interest is included in the TIP calculation. For more information, see 78 Federal Register 79981.

For purposes of calculating the TIP, determining whether to deduct from the total interest the amount of prepaid interest that may be offset by a credit to the consumer from the lender, a third party, or the seller is a fact-specific determination. In making this determination, a creditor should consider the terms of the legal obligation between the creditor and the consumer under Section 1026.17(c)(1).

Again, as explained in response to question 1, at the Loan Estimate stage, the applicable legal obligation is the loan that the consumer has applied for. In practice, there are likely few transactions in which a lender credit offsets a specific amount of prepaid interest at the time of application. The creditor must also make the disclosure based on the best information reasonably available to the creditor at the time the Loan Estimate is provided to the consumer.

At the time the Loan Estimate is provided to the consumer, it may be unlikely that the consumer has an agreement with the creditor, seller, or a third party for a credit to offset a specific amount of prepaid interest. Absent such an agreement, the estimate will generally be in good faith if the creditor discloses that the consumer will pay the total amount of interest, including prepaid interest. Therefore, in most cases, the entire amount of interest, including prepaid interest, is used for the purposes of calculating the TIP on the Loan Estimate.

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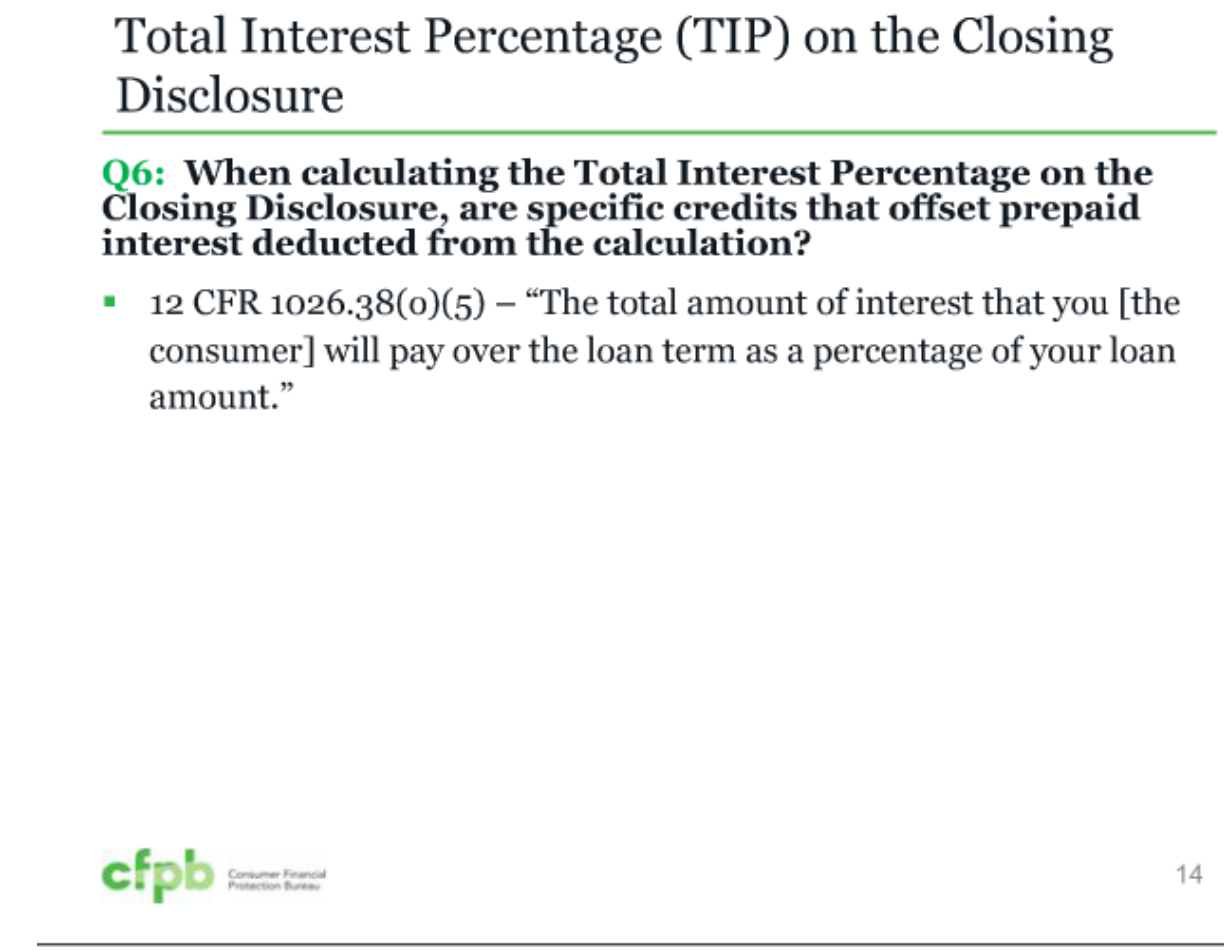

MS. SWITZER: Thanks, Chelsea.

With respect to the Closing Disclosure, when calculating the total interest percentage, or TIP, are specific credits that offset prepaid interest deducted from the calculation?

MS. PETER: Yes. When calculating the TIP on the Closing Disclosure, specific credits that offset prepaid interest known at the time the disclosure is provided are factored into the TIP calculation. Although the Loan Estimate must disclose good faith estimates, the Closing Disclosure must reflect the actual terms of the transaction as stated in Section 1026.19(f)(1)(i).

On the Closing Disclosure, the TIP is disclosed under the "Loan Calculations" table on page 5. Section 1026.38(o)(5) governs this calculation and requires disclosure of the total amount of interest the consumer will pay over the loan term.

If the consumer will not pay a portion of the interest because the creditor, seller, or other third party has agreed to pay a specific amount of interest, that amount of interest would not be included in the tip calculation for the purposes of the Closing Disclosure.

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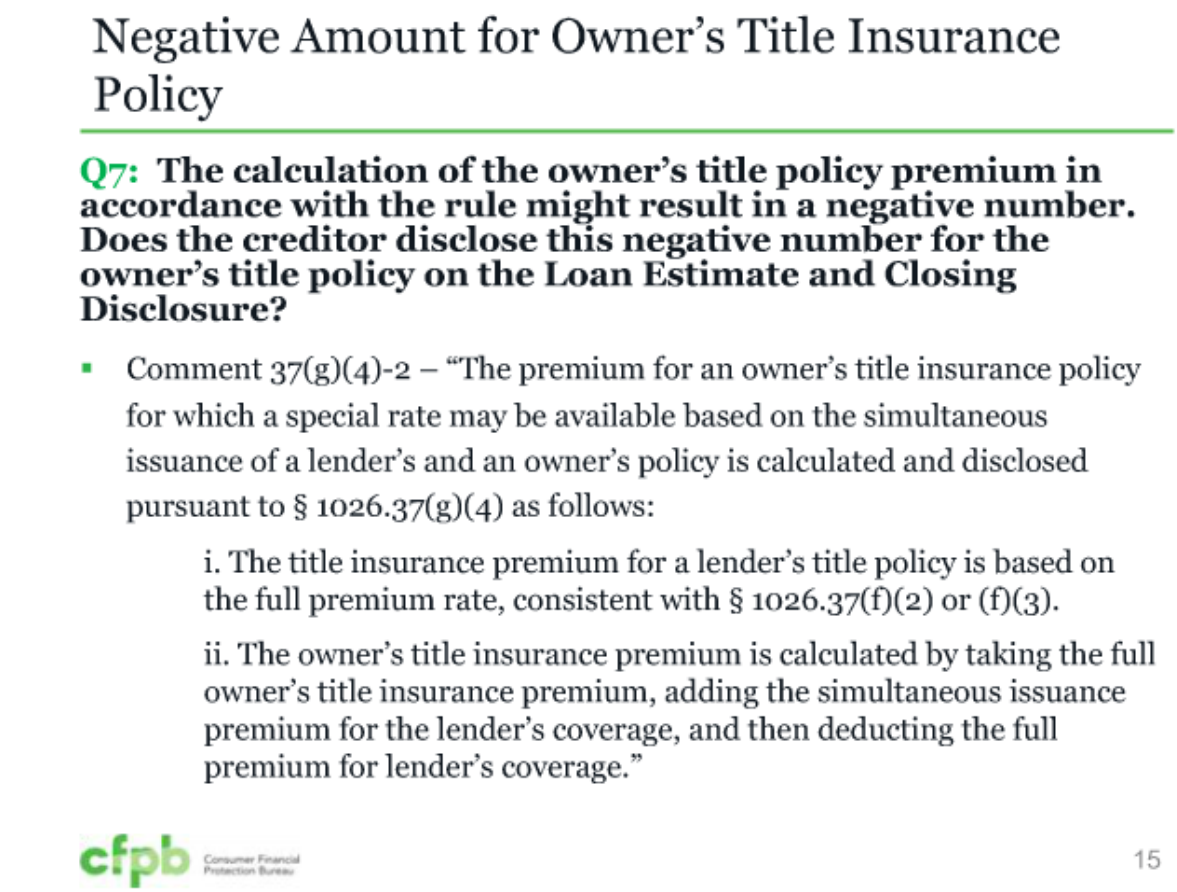

MS. SWITZER: Thanks, Chelsea. The next question, on slide 15, is for Dania. We've addressed questions related to the disclosure of title insurance in previous webinars and have received an additional question related to instances in which the title insurance in a purchase transaction has a simultaneous issuance rate or discount for both the lender's and owner's title policies. The calculation of the owner's title policy premium in accordance with the rule might result in a negative number. Does the creditor disclose this negative number for the owner's title policy on the Loan Estimate and Closing Disclosure?

MS. AYOUBI: Yes. In this case, the creditor discloses the premium for the owner's title insurance policy as a negative number. When a simultaneous issuance rate or discount is used, mostly in purchase transactions, the cost of an owner's title insurance policy is disclosed as the incremental cost of that owner's title insurance beyond the standard non-discounted cost of the lender's title insurance policy.

Comment 37(g)(4)-2 states that the owner's title insurance premium is calculated by taking the full owner's title insurance premium, adding the simultaneous issuance premium for the lender's coverage, and then deducting the full premium for lender's coverage. We previously discussed in detail how a creditor calculates these premiums in the May 2015 webinar, which I encourage our listeners to revisit.

The calculation of the premium for the owner's title policy as required under the rule may result in a negative number. When this occurs, the creditor discloses a negative number as the incremental cost of the owner's title insurance policy. When disclosed in this fashion, the disclosure conveys to the consumer that it is less expensive to purchase both owner's title insurance and lender's title insurance together than it is to purchase just lender's title insurance by itself.

There are no provisions in Regulation Z that would prohibit the cost of owner's title insurance from being disclosed as a negative number.

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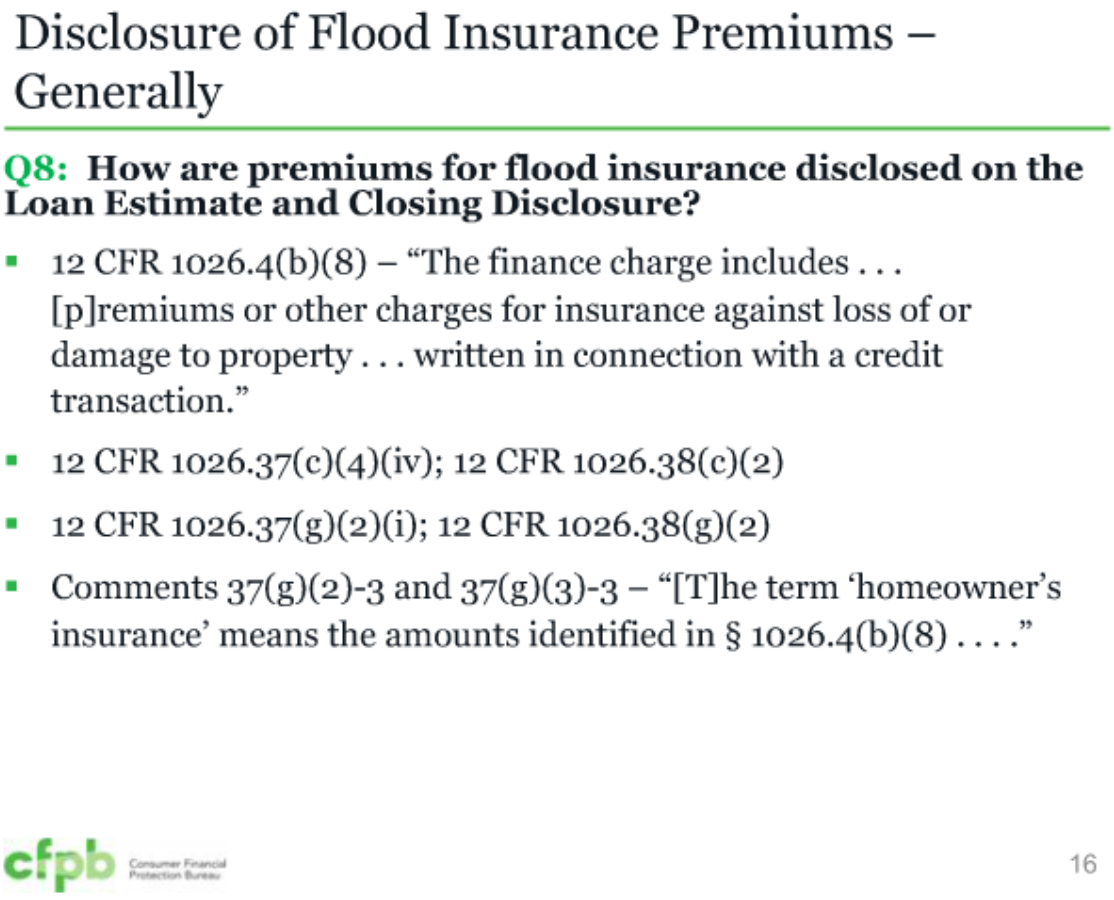

MS. SWITZER: Thanks, Dania.

Moving on now to a question regarding flood insurance premiums on slide 16.

Chelsea, how are premiums for flood insurance disclosed on the Loan Estimate and Closing Disclosure?

MS. PETER: The Loan Estimate and Closing Disclosure both require several disclosures that may include information about flood insurance. The disclosures related to flood insurance may derive from the terms of the legal obligation between the creditor and the consumer and may also be necessary because of other legal requirements. As the commentary to the rule explains in several provisions, including when discussing projected payments, prepaids, and the initial escrow payment at closing, the term "homeowner's insurance" means the amounts identified in Section 1026.4(b)(8), which include premiums for insurance against loss of or damage to property written in connection with a credit transaction. As such, flood insurance is treated under the rule and, more generally, under Regulation Z like other casualty insurance such as homeowner's insurance.

There are several places on the forms where disclosures may be made about flood insurance premiums. On page 1 of the Loan Estimate and Closing Disclosure, flood insurance may be disclosed as part of the estimated taxes, insurance, and assessments in the "Projected Payments" table under Sections 1026.37(c)(4)(iv) or 1026.38(c)(2). The box for homeowner's insurance would be checked, and yes or no would be disclosed to reflect whether the estimated amount includes an amount escrowed for flood insurance.

In addition, in the "Projected Payments" table, the estimated escrow amount would include any amounts for flood insurance in escrow. To the extent that any amount of the flood insurance premium is prepaid, that amount would be disclosed on page 2 of the Loan Estimate and Closing Disclosure in Section F of the "Other Costs" table as part of the amount prepaid for the homeowner's insurance premium under Sections 1026.37(g)(2)(i) or 1026.38(g)(2). Similarly, to the extent that any flood insurance premiums are in escrow, they would be disclosed on the line for homeowner's insurance in Section (g) of the "Other Costs" table for the initial escrow payment at closing.

On the Closure Disclosure, to the extent that flood insurance premiums are included as part of the escrow account, those premiums would be disclosed as part of the escrowed or nonescrowed property costs, and initial and monthly escrow payments on page 4.

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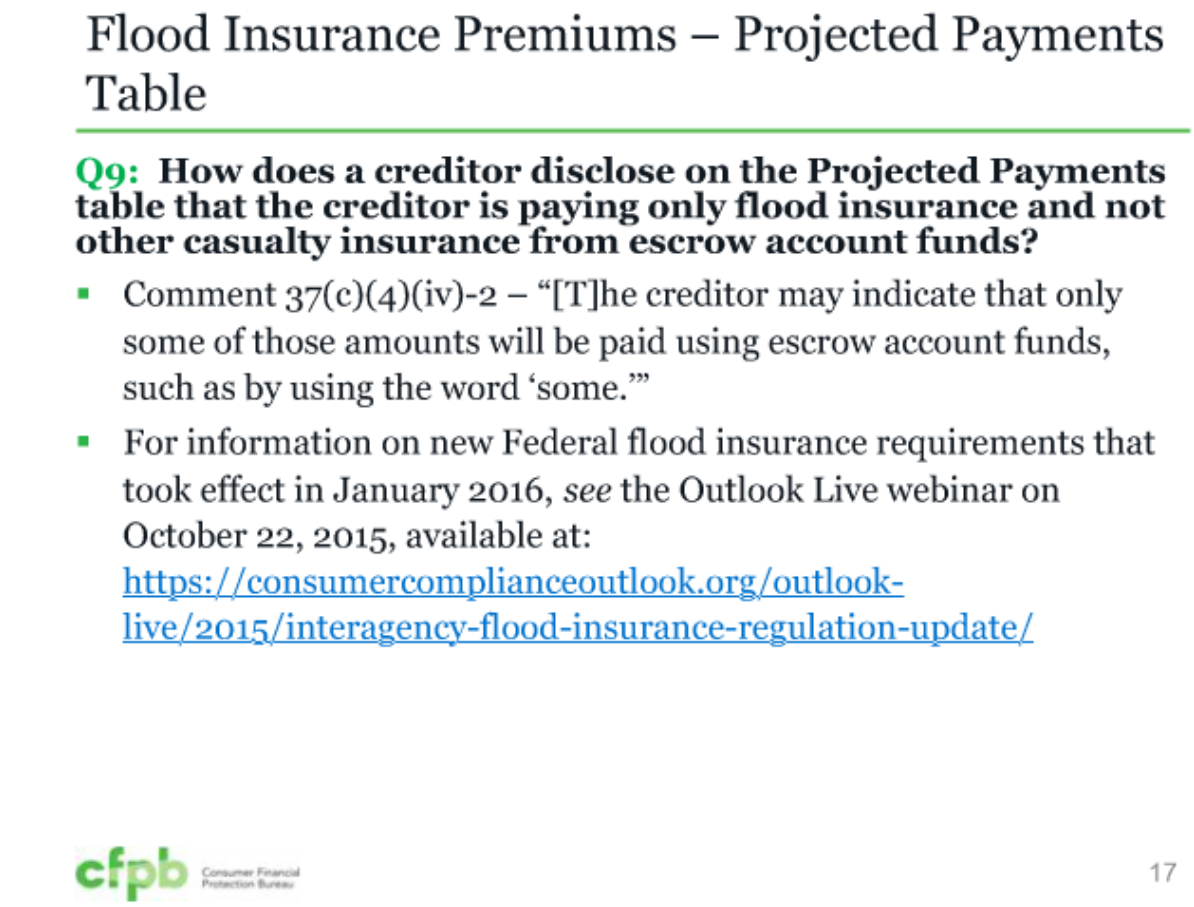

MS. SWITZER: Thanks, Chelsea.

And if the creditor is escrowing for flood insurance but not for any other casualty insurance, how does the creditor disclose on the "Projected Payments" table that the creditor is paying only flood insurance and not other casualty insurance from escrow account funds?

MS. PETER: Comment 37(c)(4)(iv)-2 directly addresses this circumstance and provides that if the amount disclosed requires the creditor to disclose a description of more than one amount and only some of those amounts will be paid by the creditor using escrow account funds, the creditor may indicate that only some of those amounts will be paid using escrow account funds, such as by using the word "Some."

Therefore, if a flood insurance premium amount is in escrow, but an amount for other casualty insurance is not, the creditor checks the box labeled "Homeowner's Insurance" on the "Projected Payments" table and may disclose "Some" to indicate that some amounts for casualty insurance will be paid by the creditor using escrow account funds.

This question and response recognized new lender responsibilities related to the escrow of flood insurance premiums that were imposed by other federal agencies pursuant to the Homeowner

Flood Insurance Affordability Act of 2014 for designated loans secured by residential improved real estate made, increased, extended, or renewed on or after January 1st, 2016.

For additional information from those agencies on these requirements, please refer to the link to the Outlook Live webinar as shown on slide 17.

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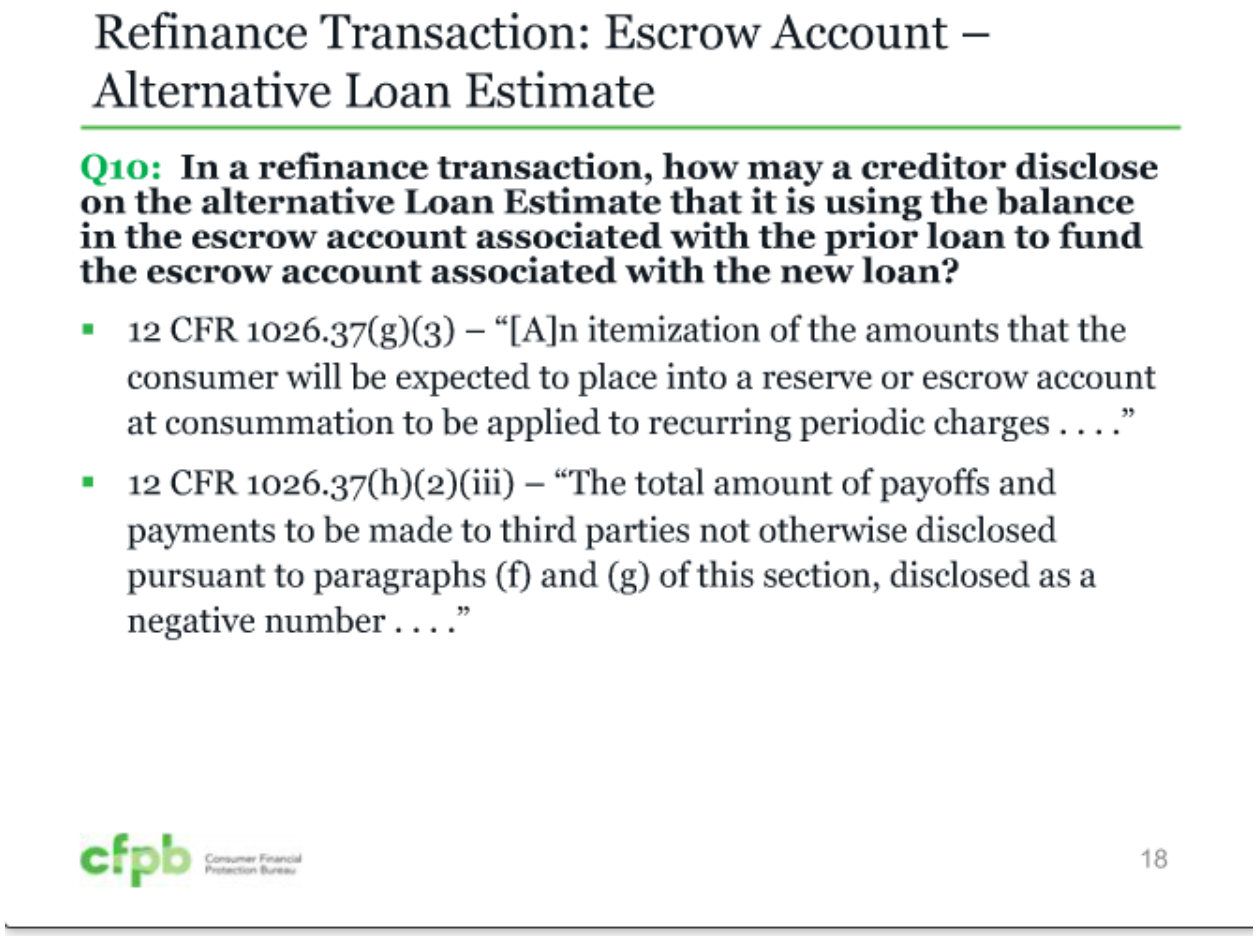

MS. SWITZER: Thanks, Chelsea.

Now, beginning on slide 18, I have a couple of questions for Seth on the alternative forms for transactions without a seller.

In a refinance transaction, how may a creditor disclose on the alternative Loan Estimate that it is using the balance in the escrow account associated with the prior loan to fund the escrow account associated with the new loan?

MR. CAFFREY: When a consumer pays a mortgage loan in full, several things can happen to the amount remaining in an escrow account. This question asks about one specific scenario. The

creditor in a refinance transaction uses a balance in the escrow account associated with the prior loan to fund the escrow account associated with the new loan. In other words, the balance is transferred. Generally, this scenario might arise when the creditor on the prior loan and the creditor on the new loan are the same entity and when the loan is being held within the creditor's portfolio.

The rule does not explicitly address how to disclose the transferred escrow balance using the alternative forms. So a creditor using those forms has some flexibility in determining how to disclose the transferred escrow balance.

Today we will discuss two possible ways to disclose the transferred escrow balance on the alternative Loan Estimate. The creditor should keep in mind that, depending on the circumstances and particulars of the transaction, there may potentially be additional ways of accurately reflecting this transaction. While we will discuss two acceptable methods today, we can't address every potentially acceptable disclosure method in every scenario. Creditors will have to determine whether a particular method of disclosure is appropriate under the facts and circumstances of a specific transaction in accordance with applicable provisions of the rule.

Turning back to the question. First, a creditor using the alternative Loan Estimate may disclose a transferred escrow balance as a separate item in Section [1026.37](g) for the initial escrow payment at closing, which appears on page 2. Under Section 1026.37(g)(3), a creditor must disclose an itemization of the amounts that the consumer will be expected to place into a reserve or escrow account at consummation to be applied to recurring periodic charges.

In the scenario we're discussing, the creditor places the transferred escrow balance into a reserve or escrow account at consummation, and that amount is to be applied to recurring periodic charges. Accordingly, the transferred escrow balance may be disclosed as a separate item in Section [1026.37](g).

Note, however, that the dollar figure should be disclosed as a negative number because the transferred funds are essentially a credit to the consumer. That is, they reduce the amount the consumer must pay at consummation.

The second way that a creditor may disclose a transferred escrow balance on the alternative Loan Estimate is by factoring the balance into the "Estimated Payoffs and Payments" row of the "Alternative Calculating Cash to Close" table, which appears on page 3.

Under Section 1026.37(h)(2)(iii), the "Estimated Payoffs and Payments" row includes the total amount of payoffs and payments to be made to third parties not otherwise disclosed under Section 1026.37(f) and (g) disclosed as a negative number. In the scenario we're discussing, the transferred escrow balance offsets the total amount of payoffs and payments and therefore reduces the amount the consumer must bring to closing.

So assuming the creditor has not already disclosed the transferred escrow balance as an initial escrow payment at closing in Section [1026.37](g), it may treat the transferred escrow balance as a credit to the consumer for purposes of calculating the estimated payoffs and payments. Under

this option, the transferred escrow balance will not appear as a separate line item on the alternative Loan Estimate.

Please note that the scenario we've been discussing differs from the common scenario in which the existing loan payoff amount is reduced by the amount of funds currently held in escrow. It also differs from the scenario in which the consumer simply receives a check for the balance in the escrow account associated with the prior loan.

In both of these scenarios, there is nothing for the creditor in a refinance transaction to disclose on the Loan Estimate or the Closing Disclosure regarding the escrow balance associated with the prior loan. This is true whether the refinance creditor is using the standard forms or the alternative forms.

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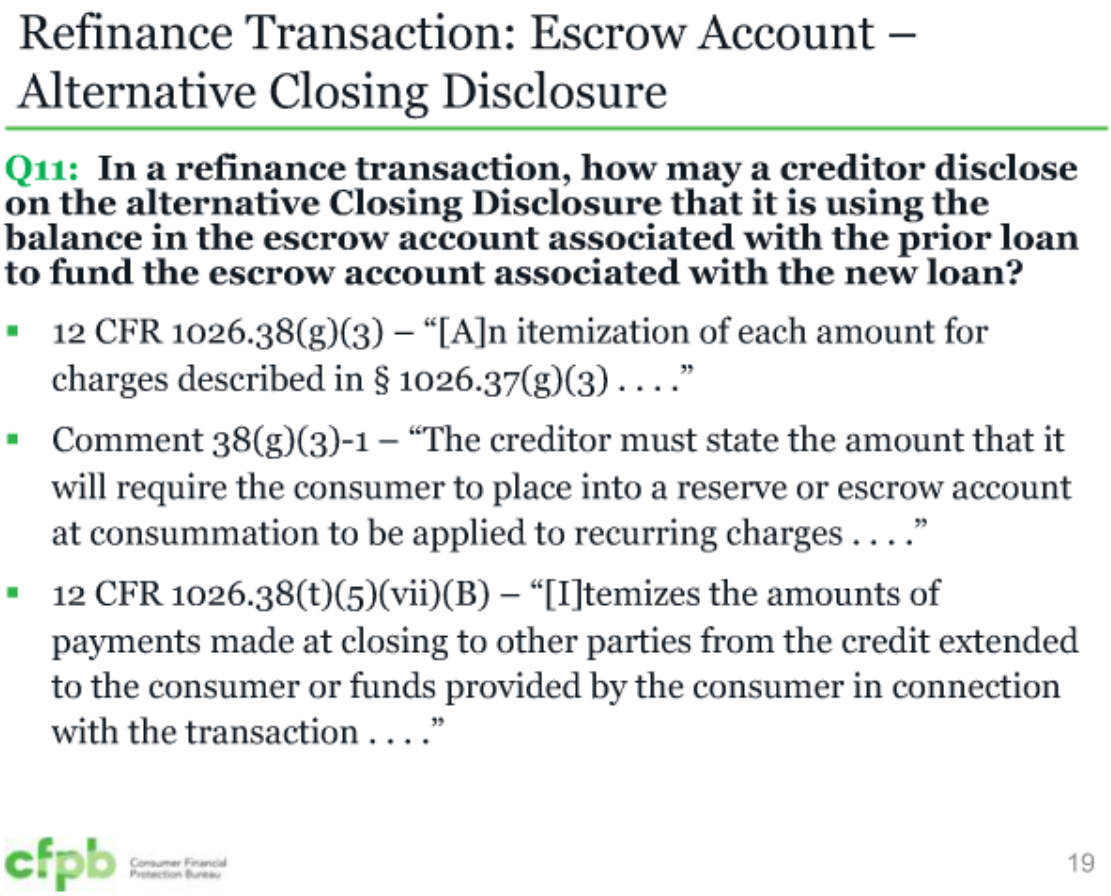

MS. SWITZER: Thanks, Seth.

Now let's discuss this scenario as it applies to the Closing Disclosure. In a refinance transaction, how may a creditor disclose, on the alternative Closing Disclosure, that it is using the balance in

the escrow account associated with the prior loan to fund the escrow account associated with the new loan?

MR. CAFFREY: As in the previous question, the rule affords creditors flexibility in determining how to disclose the transferred escrow balance from the alternative Closing Disclosure while keeping the terms of the legal obligation in mind.

Again, the question asks about a specific scenario. The creditor uses the balance in the escrow account associated with the prior loan to fund the escrow account associated with the new loan. In this scenario, there are at least two possible ways that a creditor may disclose the transferred escrow balance from the alternative Closing Disclosure.

The first way is in Section [1026.37](g) for the initial escrow payment at closing on page 2 of the alternative Closing Disclosure. This approach is similar to the first alternative Loan Estimate option we discussed in question 10. Note again, however, that the dollar figure associated with the balance should be disclosed as a negative number because the funds actually reduce the amount the consumer must pay at consummation.

The second way a creditor may disclose a transferred escrow balance on the alternative Closing Disclosure is to include a separate entry in the "Payoffs and Payments" table on page 3 of the alternative Closing Disclosure.

Under Section 1026.38(t)(5)(vii)(B), the Payoffs and Payments table itemizes the amounts of payments made at closing for other parties from the credit extended to the consumer or funds provided by the consumer in connection with the transaction. In our scenario, as we discussed in question 10, the transferred escrow balance offsets the amount of payoffs and payments made at closing to other parties. The transferred escrow balance operates, in effect, as a credit and reduces the cash the consumer needs to close. Accordingly, the balance may be disclosed as a negative number in the "Payoffs and Payments" table. Note that the entry must include the payees and the description of the purpose of the disbursement, as required by Section 1026.38(t)(5)(vii)(B).

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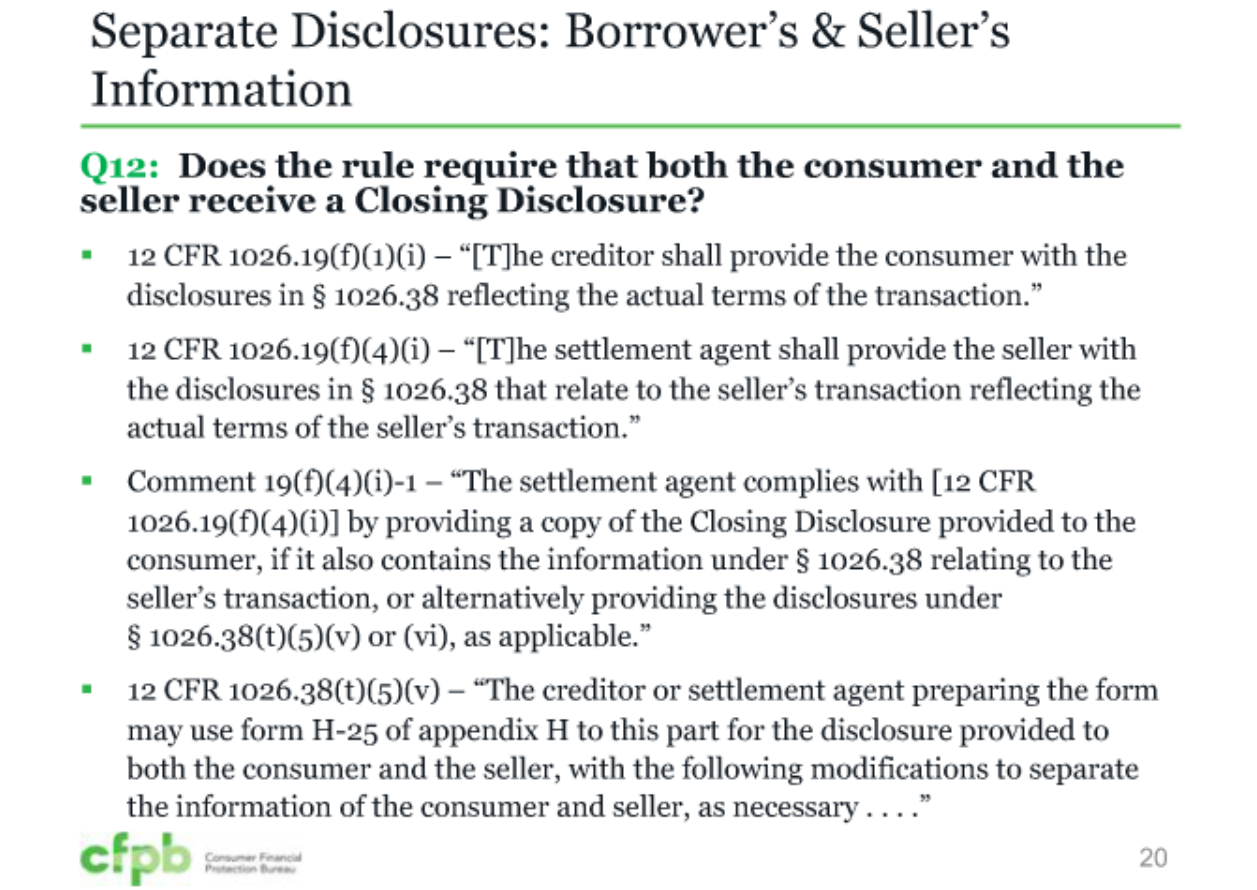

MS. SWITZER: Thanks for that explanation, Seth.

Let's turn now to a discussion of separate disclosures for the consumer and the seller. We have several questions on this topic beginning on slide 20. Dania, does the rule require that both the consumer and the seller receive a Closing Disclosure?

MS. AYOUBI: Yes. The creditor is required to provide the consumer with a Closing Disclosure reflecting the actual terms of the transaction under Section 1026.19(f)(1)(i). And the settlement agent is required to provide the seller with the disclosures that relate to the seller's transaction reflecting the actual terms of the seller's transaction under Section 1026.19(f)(4)(i).

As Comment 19(f)(4)(i)-1 explains, the settlement agent complies with this provision by providing the seller with a copy of the Closing Disclosure provided to the consumer if that disclosure also contains the information relating to the seller's transaction. However, the rule affords flexibility in providing to the seller those disclosures that relate to the seller's transaction and does not require that the seller receive the same version of the Closing Disclosure provided to the consumer. Therefore, the settlement agent may provide the seller with a copy of the consumer's Closing Disclosure that omits certain consumer-specific information, as permitted under Section 1026.38(t)(5)(v).

Alternatively, the settlement agent may provide the seller with a modified form of the Closing Disclosure, as illustrated in Model Form H-25(I) and permitted under Section 1026.38(t)(5)(vi).

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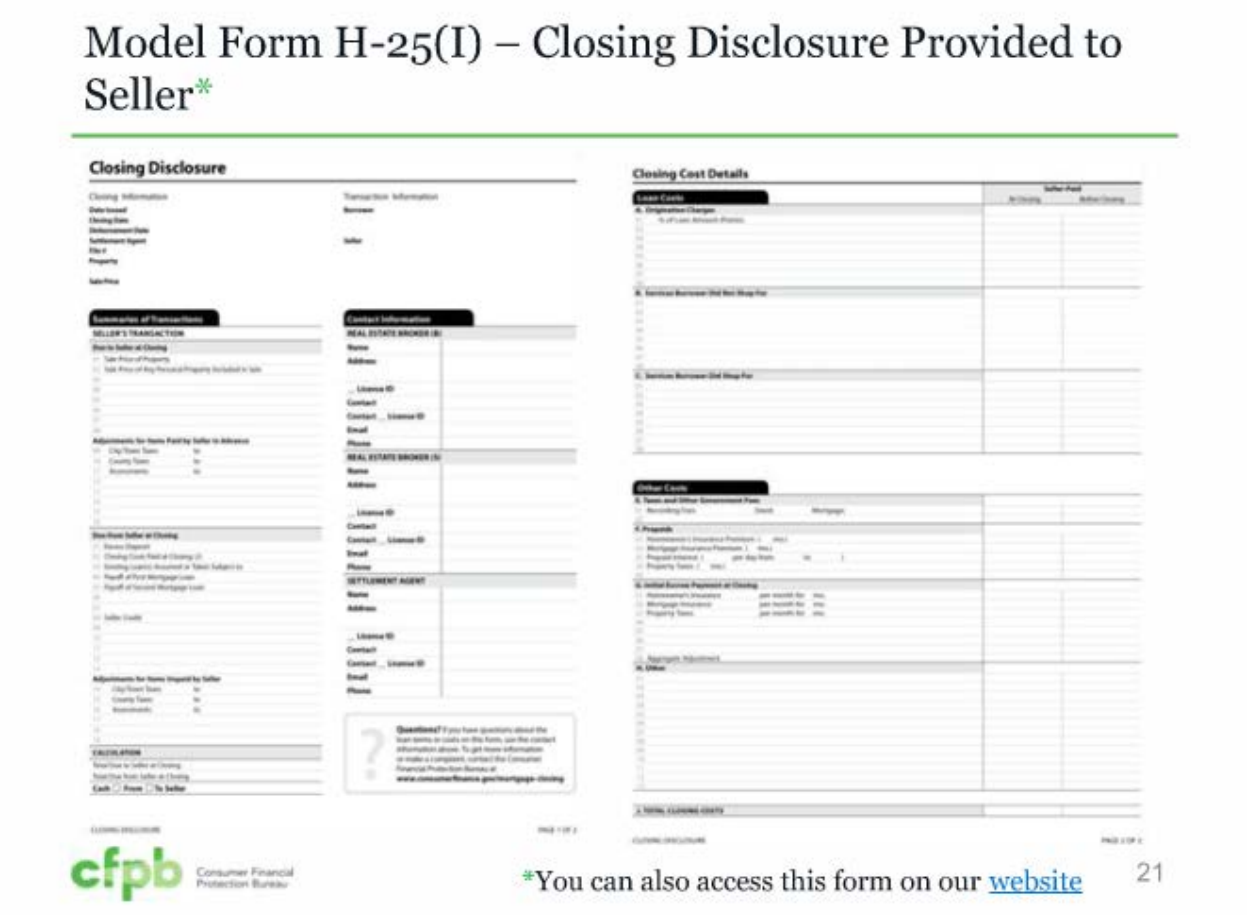

This slide shows Model Form H-25(I) of Appendix H to Regulation Z, which, as I mentioned, provides an illustration of the modified version of the seller's Closing Disclosure permitted under Section 1026.38(t)(5)(vi).

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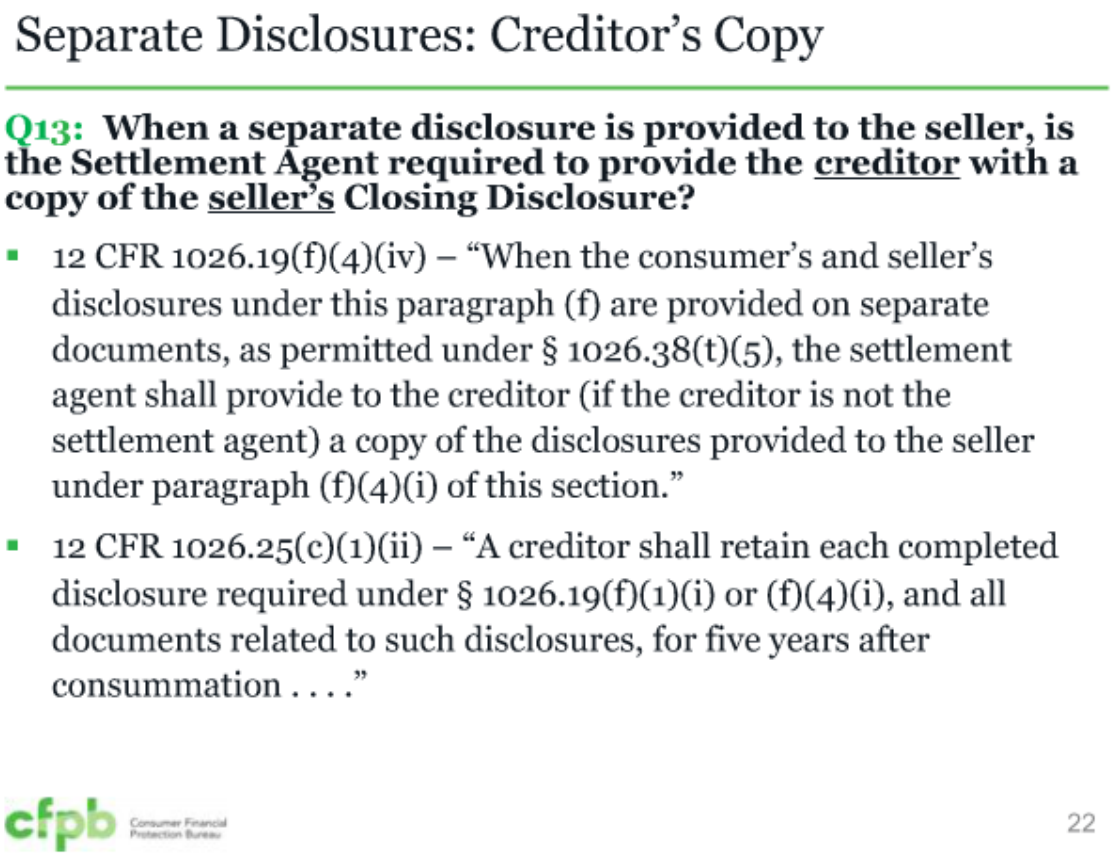

MS. SWITZER: Great, thanks, Dania. When a separate disclosure is provided to the seller, is the settlement agent required to provide the creditor with a copy of the seller's Closing Disclosure?

MS. AYOUBI: Yes. Section 1026.19(f)(4)(iv) provides that when the consumer's and seller's disclosures are provided on separate documents, the settlement agent is required to provide the creditor with a copy of the disclosures provided to the seller. This also facilitates the creditor's compliance with its record retention requirements under Section 1026.25(c)(1)(ii), which, among other things, requires the creditor to maintain a copy of the seller's Closing Disclosure for five years after consummation and, in the event the mortgage loan is sold or transferred, to include the seller's Closing Disclosure as part of the loan file to the owner or servicer.

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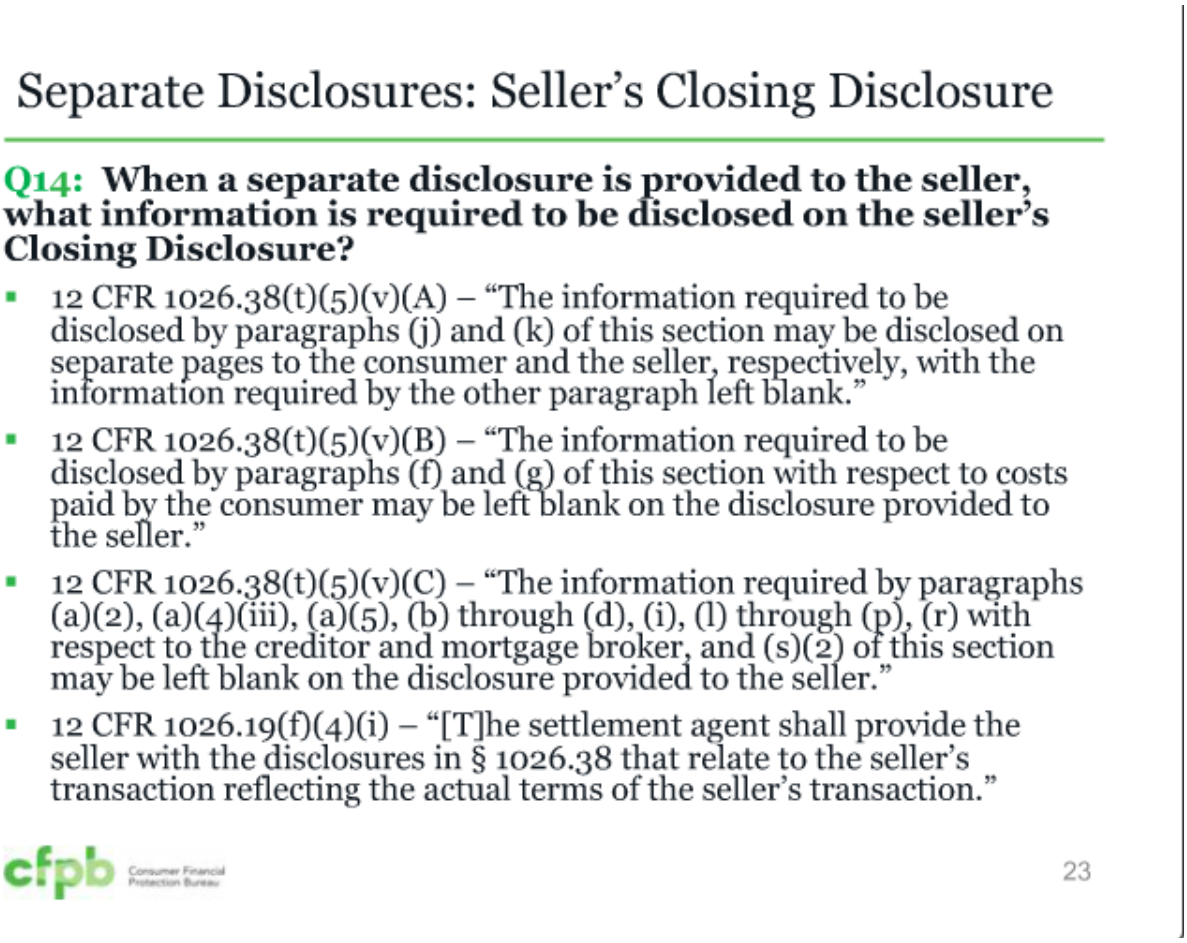

MS. SWITZER: Thanks, Dania.

And when a separate disclosure is provided to the seller, what information is required to be disclosed on the seller's Closing Disclosure?

MS. AYOUBI: When separate disclosures are provided, the information required to appear on the seller's Closing Disclosure is set forth in Section 1026.38(t)(5)(v). Section 1026.19(f)(4)(i) requires the seller be provided with the disclosures in Section 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction.

As shown on slide 21, Model Form H-25(I) of Appendix H to Regulation Z illustrates the seller's modified Closing Disclosure, which is required to disclose the summary of the seller's transaction, contact information for their real estate brokers and settlement agent, and loan costs and other costs paid by the seller at or before closing.

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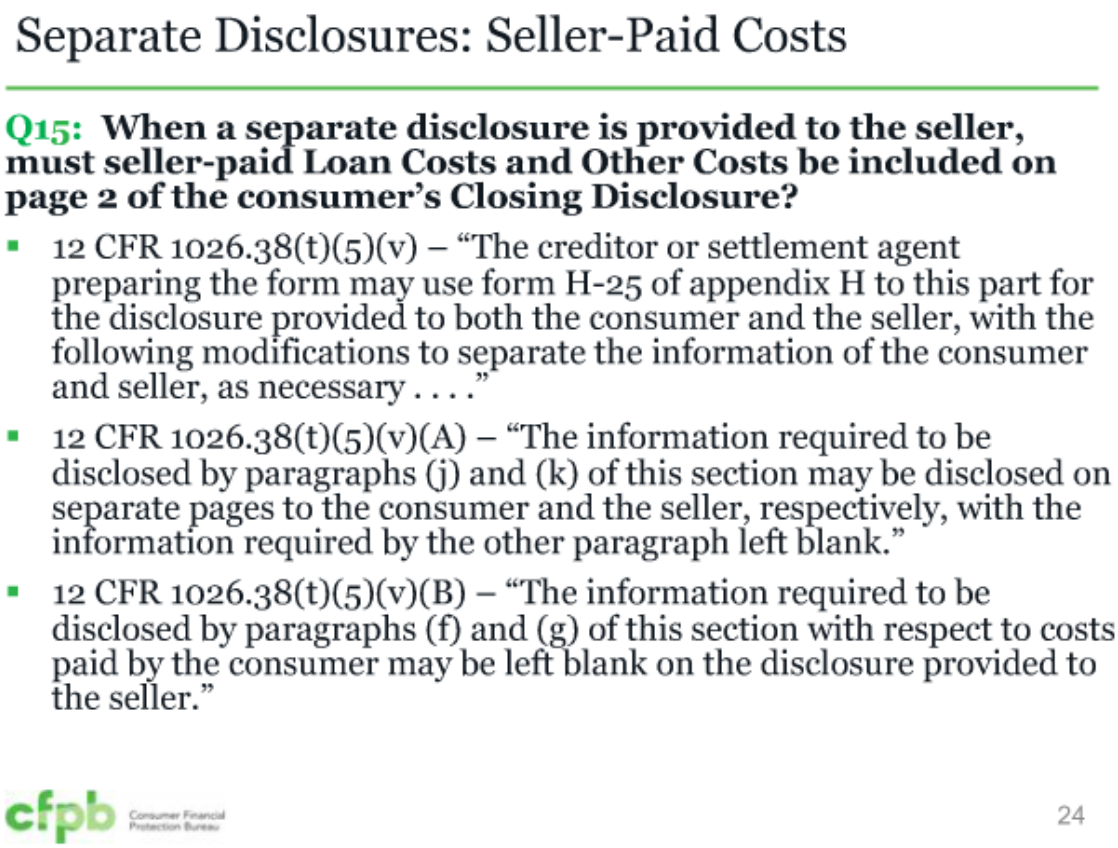

MS. SWITZER: Thanks, Dania.

When a separate disclosure is provided to the seller, must seller-paid loan costs and other costs be included on page 2 of the consumer's Closing Disclosure?

MS. AYOUBI: Yes. Seller-paid loan costs and other costs are required to be disclosed on the consumer's Closing Disclosure regardless of whether a separate Closing Disclosure is provided to the seller. The rule's provisions that permit the separation of consumer and seller information are specific as to which disclosures may be omitted, and seller-paid loan costs and other costs are disclosures that must be included on the consumer's Closing Disclosure.

If the seller receives a separate disclosure, Section 1026.38(t)(5)(v) permits the separation of consumer and seller information. When providing the consumer's Closing Disclosure, the summary of the seller's transaction, which includes an itemization of amounts due to and from the seller, the calculation of the seller's transaction, and items paid outside of closing funds are not required to be disclosed to the consumer and may be left blank under Section 1026.38(t)(5)(v)(A). And when providing the seller's Closing Disclosure, the summary of the borrower's transaction, including loan costs and other costs paid by the borrower, are not required to be disclosed to the seller and may be left blank under Section 1026.38(t)(5)(v)(B).

However, there is no parallel provision that permits omission of seller-paid loan costs and other costs from page 2 of the consumer's Closing Disclosure.

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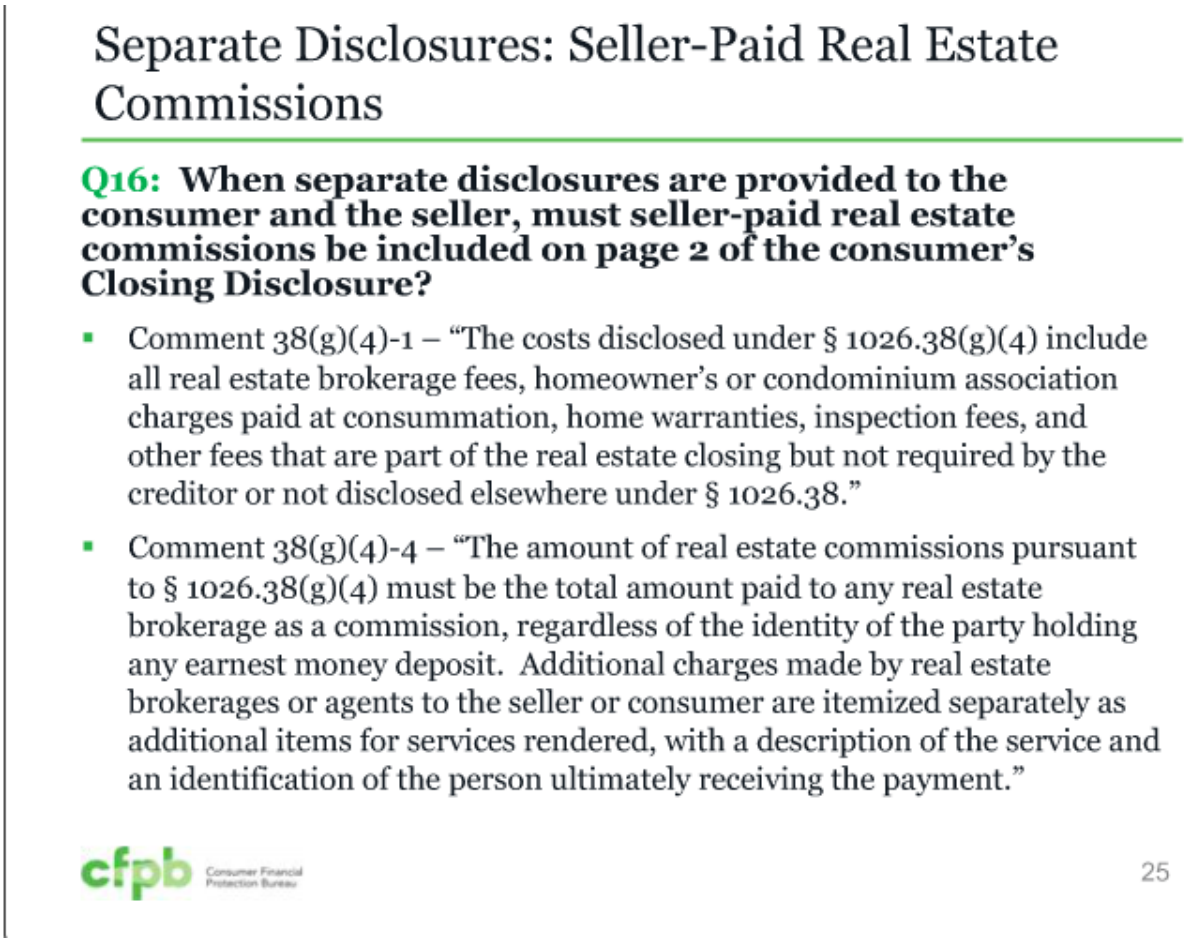

MS. SWITZER: Thanks, Dania.

A final related question on slide 25 is about seller-paid real estate commissions and is one that we often receive. When separate disclosures are provided to the consumer and the seller, must seller-paid real estate commissions be included on page 2 of the consumer's Closing Disclosure?

MS. AYOUBI: Yes. Seller-paid real estate commissions are one example of seller-paid costs that may not be omitted from and must be included on the consumer's Closing Disclosure.

As discussed in the response to the previous question number 15, in the Closing Disclosure provided to the seller, the summary of the borrower's transaction, including loan costs and other costs paid by the borrower, may be left blank.

But parallel treatment of seller-paid costs in the consumer's Closing Disclosure is not permitted, meaning that loan costs and other costs paid by the seller may not be omitted from the consumer's Closing Disclosure and, therefore, must be included.

In particular, Comment 38(g)(4)-1 provides examples of costs disclosed under the subheading labeled "Other" in the "Other Costs" table on page 2 of the Closing Disclosure. These costs include all real estate brokerage fees. And Comment 38(g)(4)-4 provides that the amount of real estate commissions disclosed as other costs must be the total amount paid to any real estate brokerage as a commission regardless of the identity of the party holding any earnest money deposits.

Additionally, noncommission real estate brokerage or agent charges for services to the seller or consumer are required to be itemized separately with a description of the service and an identification of the person ultimately receiving the payment.

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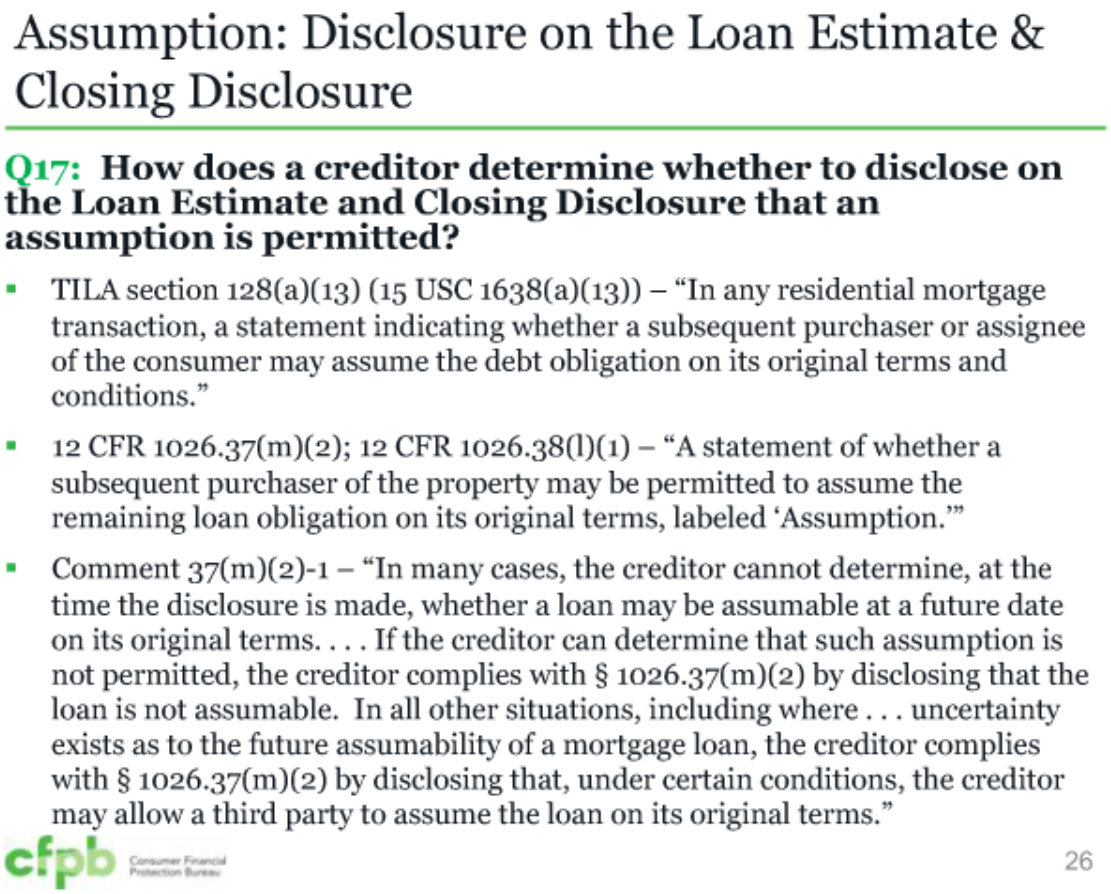

MS. SWITZER: Thanks, Dania. Let's now move on to a question we have received regarding assumptions.

Seth, how does a creditor determine whether to disclose on the Loan Estimate and Closing Disclosure that an assumption is permitted?

MR. CAFFREY: In determining whether to disclose on the Loan Estimate or Closing Disclosure that an assumption is permitted, a creditor considers the best information reasonably available and the terms of the legal obligation being offered to the consumer at the time of the disclosure.

TILA Section 128(a)(13), set forth on slide 26, requires the creditor to disclose a statement indicating whether a subsequent purchaser of the property may assume the debt obligation on its original terms and conditions. This statutory requirement predates the rule, and this disclosure was not changed by the rule. The rule implements the statutory provision at Section 1026.37(m)(2) for the Loan Estimate and Section 1026.38(l)(1) for the Closing Disclosure.

Comment 37(m)(2)-1 explains that this disclosure requires the creditor to disclose whether or not a third party may be allowed to assume the loan on its original terms if the property is sold or transferred by a consumer.

The comment further states that in many cases, the creditor cannot determine, at the time the disclosure is made, whether a loan may be assumable. It provides an example where the mortgage loan agreement specifies terms for the approval of an assumption, including the creditworthiness of a subsequent borrower and the execution of an assumption agreement.

In that scenario, if the creditor cannot determine whether a prospective subsequent borrower were qualified to assume the mortgage until the information relevant for such an analysis is later submitted and reviewed, then the creditor would disclose that the loan is assumable.

As set forth in Comment 37(m)(2)-1, reasonable uncertainty exists in that scenario, and it is appropriate for the creditor to check the box indicating "If you sell or transfer this property to another person, we will allow, under certain conditions, this person to assume this loan on the original terms."

If the creditor determines that no assumption is available under the terms of the legal obligation at the time the disclosure is made, the creditor must check the box indicating "If you sell or transfer this property to another person, we will not allow assumption of this loan on the original terms."

If the legal obligation being offered by the creditor does not provide for an assumption under any terms, then the creditor would -- will disclose that it will not allow an assumption of a loan on its original terms. This would be the case even if the creditor might later permit an assumption as a result of a case-specific review, for example, as an accommodation foreclosure.

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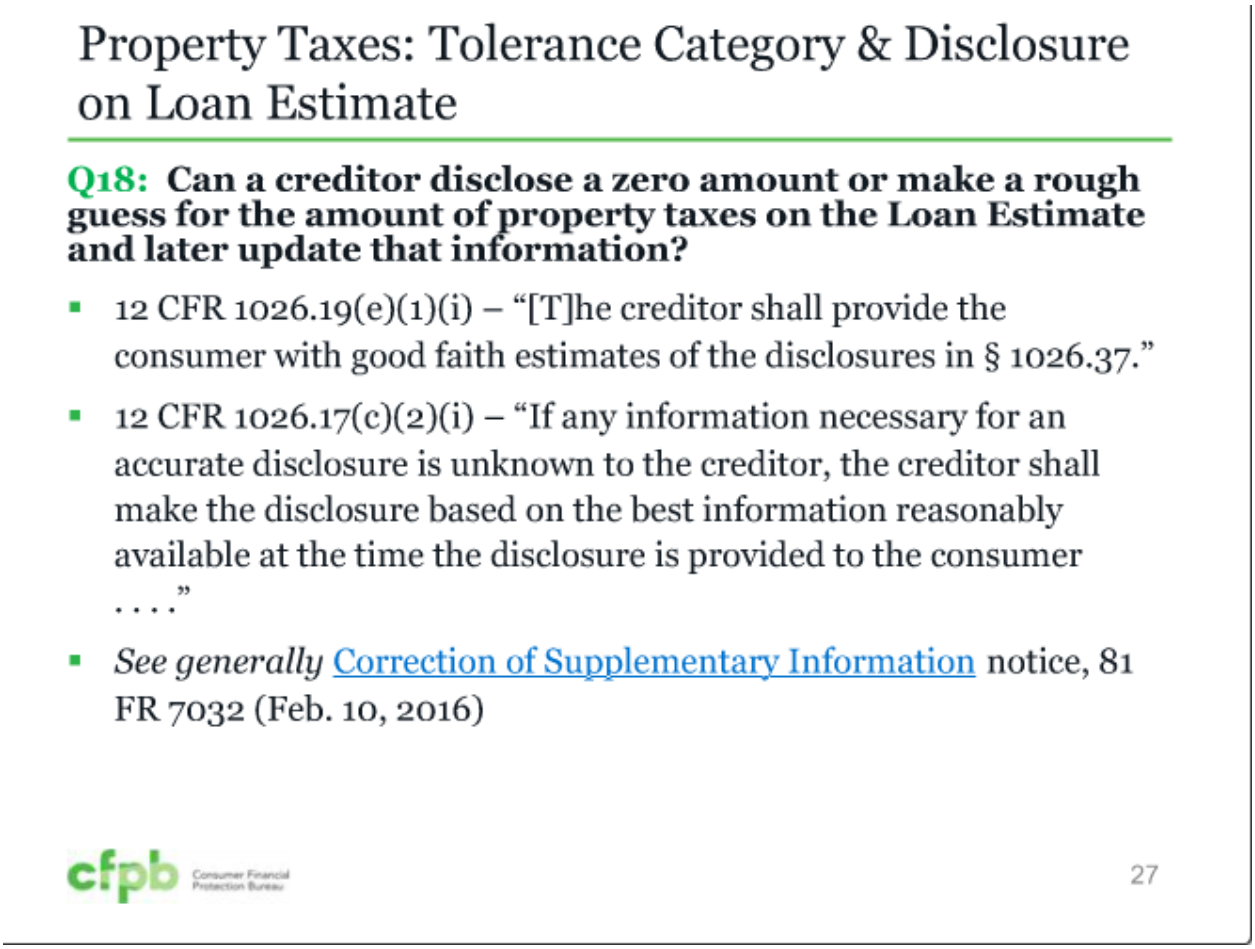

MS. SWITZER: Thanks, Seth.

Our next question, on slide 27, relates to property taxes.

Alexa, can a creditor disclose a zero amount or make a rough guess for the amount of property taxes on the Loan Estimate and later update that information?

MS. REIMELT: Assuming the property is subject to property taxes, a creditor cannot disclose zero or make a rough guess for property taxes on the Loan Estimate and then take advantage of the unlimited tolerance threshold to redisclose a different number later in the transaction. Such a disclosure would violate the requirement that the creditor provide the consumer with good faith estimates based upon the best information reasonably available at the time of the disclosure.

While the disclosure of property taxes is not subject to tolerance limits, as the Bureau recently discussed in the property tax errata notice, dated February 10th, 2016[2], the disclosure of property taxes is still subject to the best information reasonably available standard. As we discussed in the

[2] We believe this is a reference to the CFPB's Correction of Supplementary Information, 81 Fed. Reg. 7032 (Feb. 10, 2016).

response to question 1, Section 1026.19(e)(1)(i) requires that the creditor provide the consumer with good faith estimates of the required disclosures.

Comment 19(e)(1)(i)-1 explains 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 at the time the disclosure is provided to the consumer. The reasonably available standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information.

Whether the amount of property taxes disclosed on the Loan Estimate reflects the best information reasonably available at the time the disclosure is provided to the consumer is a factual question. However, it would be unlikely that an estimate of zero or a rough guess would ever meet that standard. Often, property tax information is publicly available. While it may not be possible for a creditor to ascertain the consumer-specific property tax obligation that will be due on a future date, an estimate that takes the publicly available information into account is likely required to meet the best information reasonably available standard.

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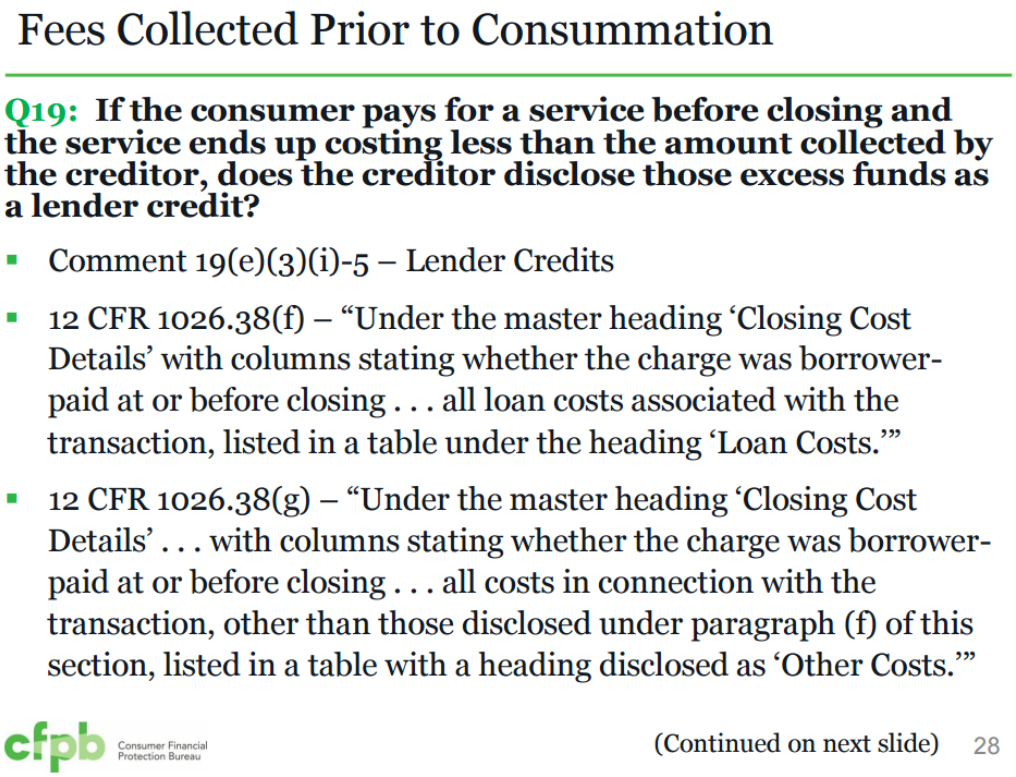

MS. SWITZER: Thanks, Alexa.

One question we've received relates to amounts paid by the consumer before closing.

Chelsea, if the consumer pays for a service before closing and the service ends up costing less than the amount collected by the creditor, does the creditor disclose those excess funds as a lender credit?

MS. PETER: No. The creditor would not disclose those excess funds as a lender credit. A lender credit is a payment, either specific or general, from the creditor to the consumer to pay for a fee, and it's disclosed as a negative charge to the consumer, as explained in Comment 19(e)(3)(i)-5. However, the question posed relates to excess amounts paid by the consumer for a service before closing.

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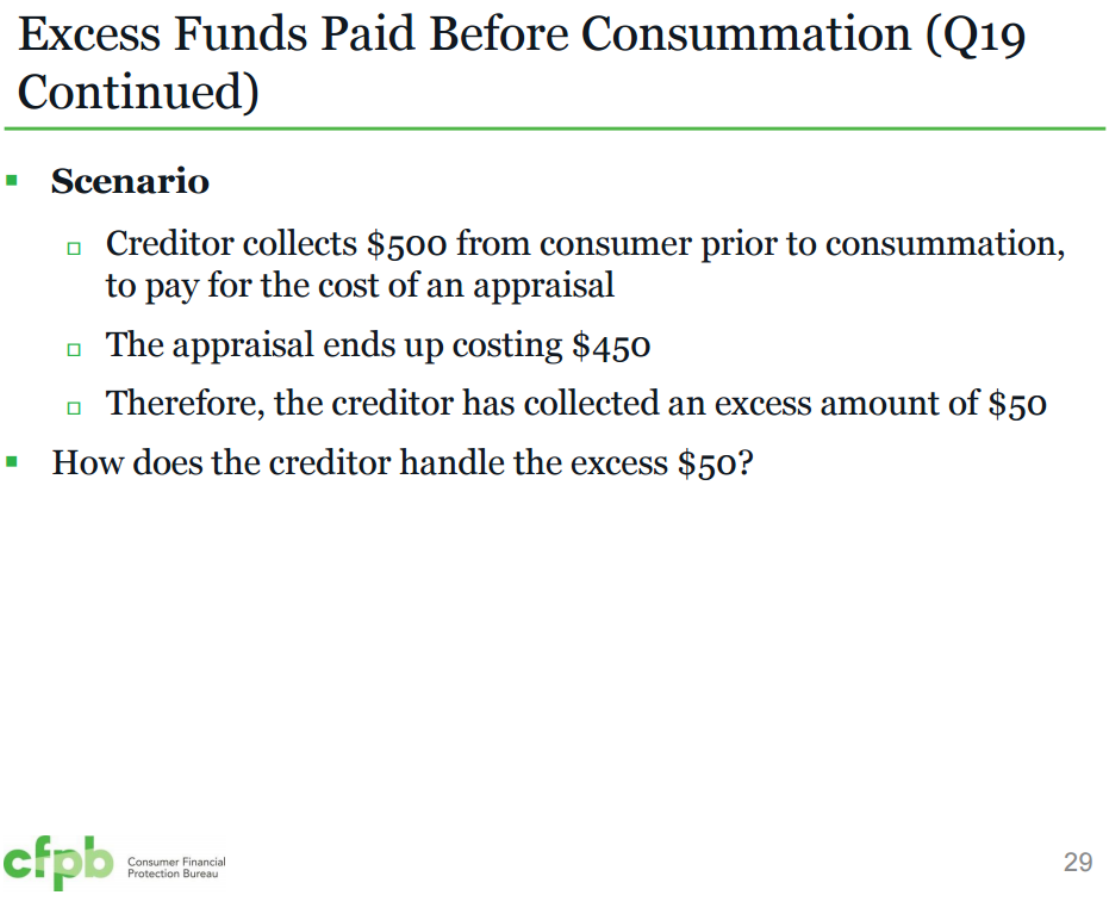

Let's consider an example on slide 29. Let's assume that the consumer has received the Loan Estimate and has expressed an intention to proceed. The creditor then collects $500 from the consumer for a particular charge, let's say for an appraisal. However, the appraisal winds up only costing $450. Therefore, there is an excess of $50 that the creditor already collected from the consumer and for which there needs to be an allocation of funds to charges that the consumer has paid before consummation.

The question is how the creditor accounts for the excess $50 collected from the consumer before closing and which was not needed for the appraisal service for which it was collected.

The creditor has at least two options for how to reconcile those excess funds paid by the consumer before closing. First, the creditor may send the funds back to the consumer before consummation by check. In that event, the creditor would simply disclose $450 as paid by the consumer before closing for the cost of the appraisal. Second, there are many other costs associated with the residential real estate transaction to which the excess payment from the consumer may be applied. With the second approach, it becomes a question of how to disclose the excess funds on the Closing Disclosure under Section 1026.38(f) and (g). Both provisions state that the charges listed as loan costs and other costs are made in columns stating whether the charge was borrower paid at or before closing.

In our example, there are two possible ways to comply with this instruction. The excess $50 may be allocated to other services paid by the consumer before closing, especially to those charges of the creditor, since the $50 is already in the creditor's possession before closing.

Alternatively, the creditor may disclose the full amount collected before closing for the appraisal service and then disclose a negative amount of $50 being given back to the consumer at closing on the same line for that service. But for that specific charge, the creditor would disclose negative $50 as paid by the consumer at closing and $500 as paid by the consumer before closing.

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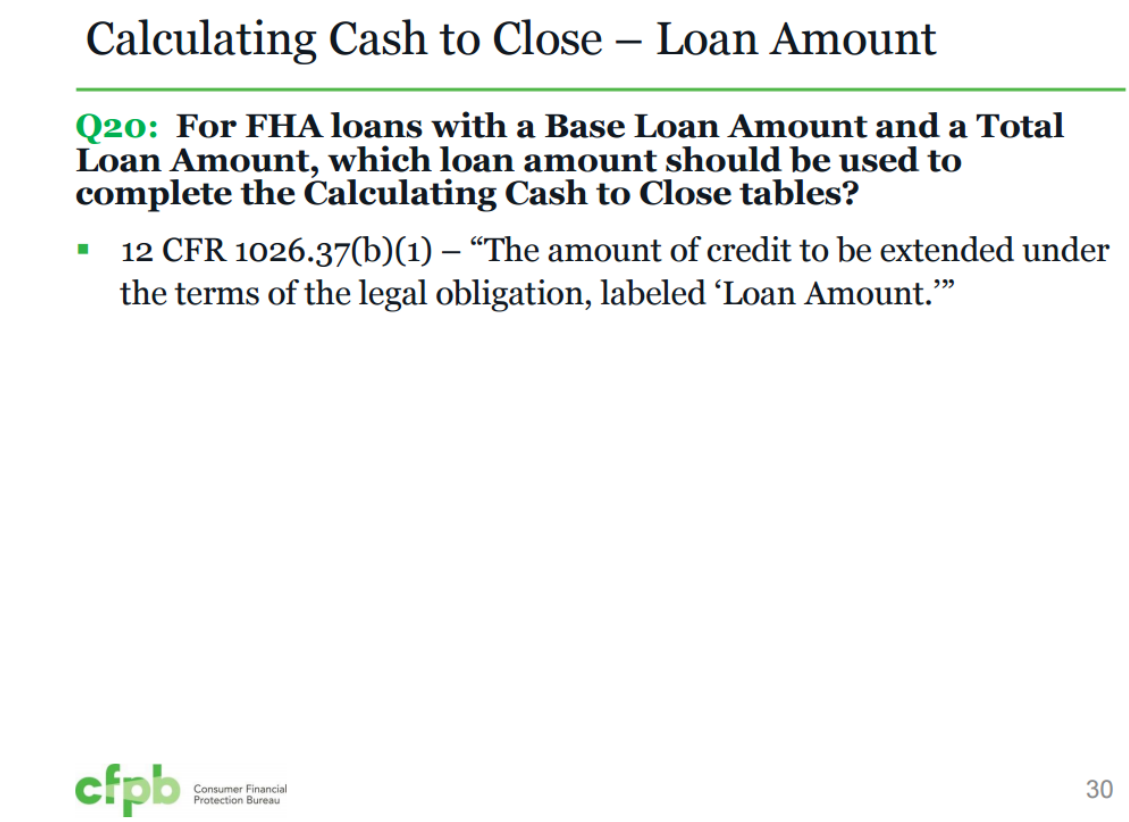

MS. SWITZER: Thanks, Chelsea.

Now we have a question regarding the "Calculating Cash to Close" table.

Alexa, for FHA loans with a base loan amount and a total loan amount, which loan amount should be used to complete the "Calculating Cash to Close" tables?

MS. REIMELT: Regardless of how the amount of credit to be extended is described, either by creditors themselves or other programmatic requirements, the amount disclosed as the loan amount and the basis for the "Calculating Cash to Close" table is the amount of credit to be extended.

For the purposes of the Loan Estimate and Closing Disclosure, Regulation Z defines the loan amount in Sections 1026.37(b)(1) and 1026.38(b) as the amount of credit to be extended under the terms of the legal obligation.

The base loan amount and total loan amount for FHA loans are determined by FHA in accordance with its program requirements which the Bureau cannot interpret.

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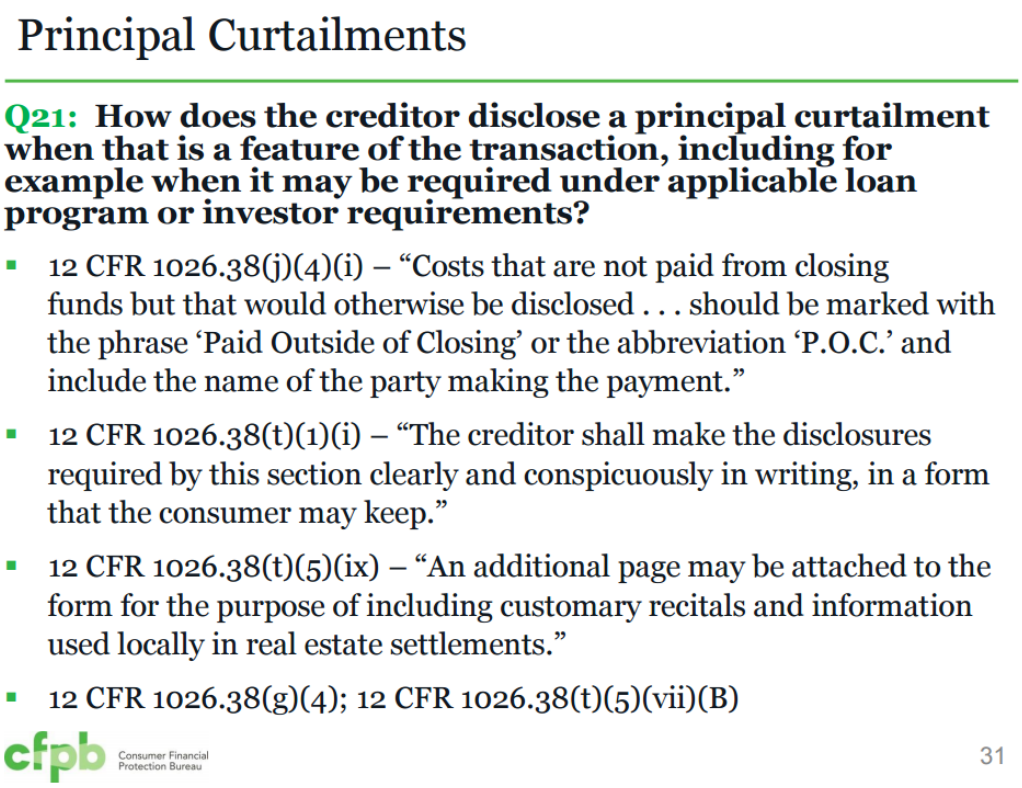

MS. SWITZER: Thanks, Alexa.

Our next question, on slide 31, relates to the disclosure of principal reductions or curtailments on the Closing Disclosure.

Seth, how does the creditor disclose a principal curtailment when that is a feature of the transaction, including, for example, when it may be required under applicable loan program or investor requirements?

MR. CAFFREY: In determining how to disclose a principal curtailment on the Closing Disclosure, a creditor should consider what purpose the principal curtailment serves in the specific transaction.

A principal curtailment is an amount applied to the principal balance of the loan, immediately or very soon after consummation, which reduces the consumer's outstanding debt. This is a tool that can be used, as permitted by applicable government loan programs or investor requirements, to ensure that the consumer either provides a certain amount of cash at closing or does not receive more cash at closing than is permitted under those requirements.

Because the principal curtailment may be used for either purpose and can affect the cash to close differently, let's discuss each scenario separately.

The first scenario is when the consumer must bring a certain amount of cash to closing according to minimum cash investment requirements under an applicable loan program, including, for example, FHA loans. Let's take a common example related to lender credits provided to the consumer to cure a tolerance violation. In some instances, the provision of a credit by the creditor to the consumer to cure a tolerance violation would mean that the cash investment of the consumer would drop below a certain threshold.

A principal curtailment may be used to apply any such tolerance cure to the outstanding principal balance, thus allowing the consumer to meet the minimum cash investment amount at closing. But adding the principal curtailment into the calculation of cash to close would defeat the purpose of the principal curtailment itself.

Accordingly, under Section 1026.38(j)(4) on the Closing Disclosure, the creditor would disclose a principal curtailment to cure a tolerance violation as an amount paid outside of closing marked with the phrase "paid outside of closing" or the abbreviation POC. For example, the disclosure may state "$500 principal curtailment for exceeding legal limits, POC," although any language may be used to convey this to the consumer as long as it meets the clear and conspicuous standard under Section 1026.38(t)(1)(i). Alternatively, as permitted under Section 1026.38(t)(5)(ix), an addendum may be used to disclose the principal curtailment.

As to the second scenario for which a principal curtailment may be used, in some refinance transactions, investor requirements stipulate that a consumer cannot receive more than a certain amount of cash from the transaction, for example, a cap of $1,000. In some circumstances, closing costs, such as the payoff of an existing loan, may be less than anticipated, meaning that the loan amount exceeds the closing costs, for example, by $2,000.

The excess $1,000 may be applied as a principal curtailment toward the outstanding principal balance immediately or soon after consummation, reducing the amount of cash the consumer would receive. The creditor would disclose this as a charge, either under Section 1026.38(g)(4) on either the standard or alternative closing disclosure or as an entry in the "Payoffs and Payments" table under Section 1026.38(t)(5)(vii)(B) on the alternative Closing Disclosure.

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Construction Webinar Follow-Up Question: Interest Reserve

Q22: In a construction loan, how does a creditor disclose an "interest reserve" established to ensure that interest is paid as it accrues?

- Comment Appendix D-5.i – "If a creditor permits a consumer to make interest payments as they become due, the interest reserve should be disregarded in the disclosures and calculations under Appendix D."
- Comment Appendix D-5.ii – "If a creditor requires the establishment of an interest reserve and automatically deducts interest payments from the reserve amount rather than allow the consumer to make interest payments as they become due, the fact that interest will accrue on those interest payments as well as the other loan proceeds must be reflected in the calculations and disclosures."

cfpb Consumer Financial Protection Bureau

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MS. SWITZER: Thanks, Seth.

That brings us to our final question for today, which we received as a follow-up from our recent webinar on construction lending.

Dania, in a construction loan, how does a creditor disclose an interest reserve established to ensure that interest is paid as it accrues?

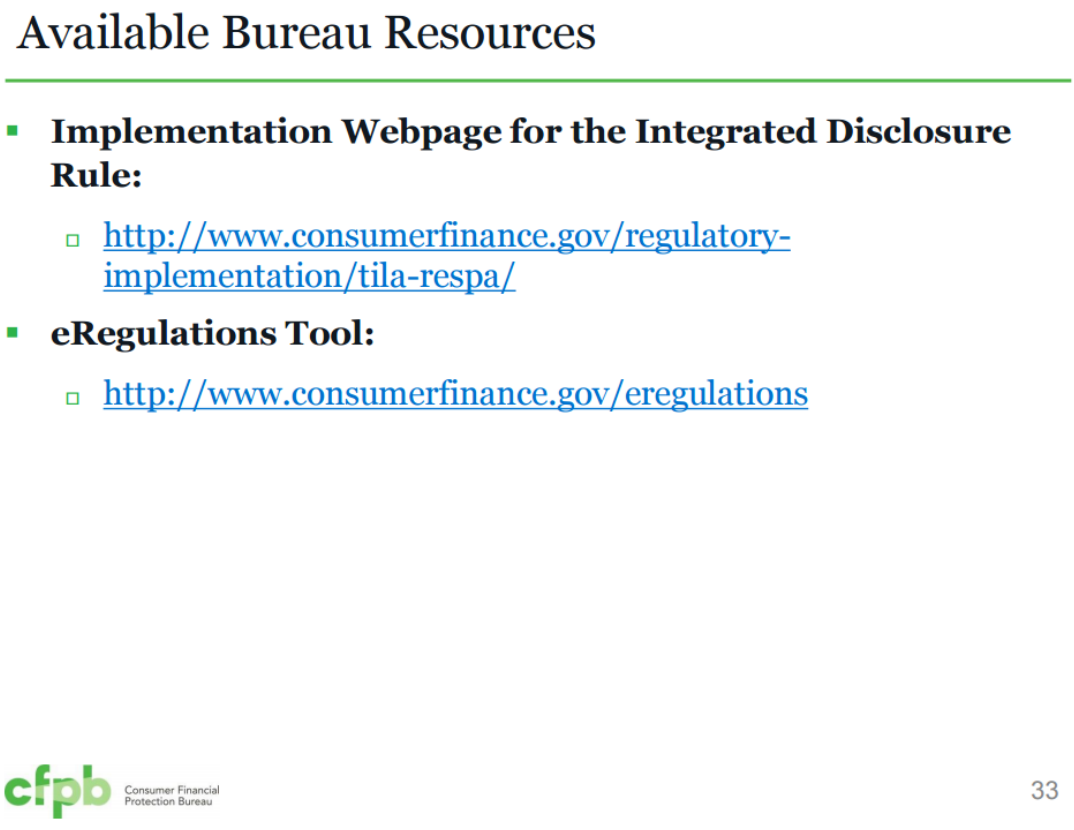
MS. AYOUBI: If an interest reserve is established in a construction loan to ensure that interest is paid as it accrues, a creditor would not need to disclose the reserve amount as a separate item.

Comment Appendix D-5 directly addresses this question and provides that if a creditor permits a consumer to make interest payments as they become due, the interest reserve should be disregarded in the disclosures and calculations under Appendix D.

However, if a creditor requires the establishment of an interest reserve and automatically deducts interest payments from the reserve amount rather than allowing the consumer to make interest payments as they become due, the fact that interest will accrue on those interest payments as well as the other loan proceeds must be reflected in the calculations and disclosures.

To reflect the effects of such compounding, a creditor should first calculate interest on the commitment amount, exclusive of the interest reserve, using the Appendix D functions to calculate the interest. The creditor would then add the figure obtained by assuming that one half of the total interest calculated under Appendix D is outstanding at the contract interest rate for the entire construction period. For an example of how to calculate this amount, see Comment Appendix D-5.ii.

Next slide, please.



MS. SWITZER: Thanks, Dania.

This concludes the questions being addressed today.

The final slide again provides links to the Bureau's implementation web page for the rule and to our eRegulations tool. I encourage you all to familiarize yourself with these resources that we have made available on our website.

Thank you to everyone for participating in this webinar. Now, I will turn it back over to Jean.

MS. ROARK: All right. Thanks so much. We did just push out our survey through the webinar tool so please take just a moment to fill that out. We read every response and strive to make our sessions better based on your feedback.

I would like to thank you for joining us today, and a special thank-you to all of our presenters, and the Outlook Live team for their time.

As a quick reminder, remember to check our website www.consumercomplianceoutlook.org for the archive of this call and for information on upcoming sessions.

Thanks again, and have a great rest of your day.