



Bankers Advisory

COMPLIANCE MONITOR

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CFPB Publishes Construction Loan Fact Sheet for TRID

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January 10, 2016 the Consumer Financial Protection Bureau (CFPB) published a two-page Fact Sheet entitled *Know Before You Owe Mortgage Disclosures and Construction Loans*. The information provided is formatted for both consumers and professionals and reproduced below:

Construction Loans Are Covered by the Know Before You Owe Mortgage Disclosures

Most construction loans that are closed-end consumer credit transactions secured by real property are covered by the *Know Before You Owe* mortgage disclosures. A construction loan that is an open-end transaction or a loan for a commercial purpose is not covered.

Existing Provisions for Construction Loan Disclosures

The *Know Before You Owe* mortgage disclosure rule explicitly affirmed that Regulation Z's long-standing provisions for disclosures for certain construction loans and construction-to-permanent loans - §1026.17(c)(6)(ii) and Appendix D - continue to apply, including to the Loan Estimate and Closing Disclosure.

Disclosing a Construction Loan with Permanent Financing as One Loan or Two Loans

Section 1026.17(c)(6)(ii) of Regulation Z has long provided that, 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 for purposes of required disclosures. The creditor can use either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for the two phases. This rule applied before the *Know Before You Owe* mortgage disclosure rule was issued and it continues to apply, including for the Loan Estimate and Closing Disclosure.

If the creditor chooses to disclose the construction-to-permanent financing as one transaction, a single set of disclosures (Loan Estimate and Closing Disclosure) covers both phases of the transaction. If the creditor chooses to disclose the construction-to-permanent financing as separate transactions, the construction phase has its own Loan Estimate and Closing Disclosure, and the permanent phase has its own, separate Loan Estimate and Closing Disclosure.

The creditor can make this election whether the construction phase and the permanent phase are both closed at the same time or there are separate closings for the construction and permanent financing phases.

More Basics of Construction Loan Disclosures

Appendix D to Regulation Z provides a special procedure to estimate and disclose the terms of a construction loan with multiple advances. Appendix D includes guidance for the calculation of the interest portion of the finance charge, as well as guidance regarding disclosures.

The *Know Before You Owe* mortgage disclosure rule added comment 7 to Appendix D. Comment 7 provides guidance for making the projected payments disclosures for construction loans in the Loan Estimate and the Closing Disclosure. Comment 7 demonstrates how the projected payments table may be disclosed when the construction phase and permanent phase are disclosed as either separate transactions or as a single transaction.

The Bureau is considering additional guidance to facilitate compliance with the *Know Before You Owe* mortgage disclosure rule, including possibly a webinar on construction loan disclosures.

