

WAC 208-660-430 Disclosure requirements. (1) What disclosures must I make to borrowers and when?

(a) Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), (3), and 19.144.020. The one page disclosure summary required by RCW 19.144.020 must be dated when provided to the borrower. The disclosures must be in a form acceptable to the director.

(b) If a lender is providing disclosures to the borrower, you must maintain copies of those disclosures and a copy of your agreement with the lender about the provision of disclosures; failure to do so would result in a violation.

(2) **What is the disclosure required under RCW 19.146.030(1)?** A full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker. An estimate made in good faith of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

(3) **What is the disclosure required under RCW 19.146.030(2)?** Mortgage brokers must disclose the following content:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

Disclosure in compliance with the requirements of the Truth-in-Lending Act and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure in compliance with the requirements of Regulation Z, Truth-in-Lending Act and Regulation X, RESPA as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(c) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, if guaranteed by a company other than your company, you must provide the name of that company, whether and under what conditions any rate lock fees are refundable to the borrower and:

- (i) The number of days in the rate lock period;
- (ii) The expiration date of the rate lock;
- (iii) The rate of interest locked;

- (iv) The date the rate lock agreement was provided to the borrower; and
- (v) Any other terms of the rate lock agreement.
- (d) You may rely on a lender's rate lock agreement if it is in compliance with (c) of this subsection.
- (e) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date that includes the items from (b) of this subsection;
- (f) Prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose the payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure;
- (g) See subsection (7) of this section if the borrower initially chooses to float rather than lock the interest rate;
- (h) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower, to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent; and
- (i) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded. If the mortgage broker does not collect trust funds of any kind, the disclosure is not required.
- (4) What is the disclosure required under RCW 19.144.020?**
- (a) You must provide the borrower with a clear, brief, one page summary to help borrowers understand their loan terms. The disclosure summary must be provided on one page separate from any other documents and must use clear, simple, plain language terms that are reasonably understandable to the average person.
- (b) Disclosure in compliance with the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and Regulation X, 12 C.F.R. 1024.7 is considered compliance with this disclosure requirement.
- (5) How do I disclose the lender's credit or charge for the interest rate?**
- (a) You must disclose the credit or charge for the interest rate as a dollar amount credited to the borrower on the good faith estimate or loan estimate.
- (b) You must direct the settlement service provider to disclose the credit or charge for the interest rate on the applicable settlement statement. The amount must be expressed as a dollar amount.
- (c) Failure to properly disclose the credit or charge for the interest rate is a violation of RCW 19.146.0201 (6) and (11), and RESPA.
- (6) Are there additional disclosure requirements related to interest rate locks?** Yes. You must provide the borrower a new rate lock agreement within three business days of a change in the locked interest rate. The new rate lock agreement must include all the terms required under subsection (3)(c) of this section. Changes to a locked interest rate can only occur for valid reasons such as changes in loan to value, credit scores, or other loan factors directly affecting pricing. Lock extensions and relocks are also valid reasons for changes to a previously locked interest rate.

(7) **What must I disclose to the borrower if they do not choose to enter into a rate lock agreement?** If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the good faith estimate or loan estimate required by TILA is deemed compliance with this subsection.

(8) **Will a rate lock agreement always guarantee the interest rate and terms?** No. A rate lock agreement may or may not be guaranteed by the mortgage broker or lender. The rate lock agreement must clearly state whether the rate lock agreement is guaranteed by the mortgage broker or lender.

(9) **How do I disclose the payment of a rate lock fee?** In a table funded transaction, prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose the payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(10) **Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)?** Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2)(a), mortgage brokers are encouraged to use the federal loan estimate form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal loan estimate only suffices for the content of disclosures under RCW 19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2)(b), mortgage brokers are encouraged to use the federal good faith estimate or loan estimate disclosure form provided under the Real Estate Settlement Procedures Act and Regulation X or the Truth in Lending Act and Regulation Z, as now or hereafter amended. However, the federal good faith estimate or loan estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.030(1).

(c) For RCW 19.146.030 (2)(c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the department published model disclosure forms that can be found on the department's website.

(11) **May my mortgage broker fees increase following the disclosures required under RCW 19.146.030(1)?** Pursuant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate or loan estimate disclosure required in RCW 19.146.030 (1) and (2)(b), unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(12) **Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure?** Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the applicable settlement statement or final HUD-1 do not exceed the total

closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate or loan estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

This section does not apply to the disclosure required in RCW 19.144.020.

(13) What action may the department take if I improperly disclose my mortgage broker fees on the good faith estimate or loan estimate and applicable settlement statement? If you fail to disclose your mortgage broker fees as required, the department may request, direct, or order you to refund those fees to the borrower if the result of that disclosure resulted in confusion or deception to the borrower.

(14) May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the applicable settlement statement and the incorrect disclosure was made by an independent escrow agent, title company, or lender? If the mortgage broker can show the department that they disclosed their fees correctly on the good faith estimate or loan estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the applicable settlement statement, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

(15) What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)? Generally, the department may request, direct, or order you to refund fees.

(16) How will the department determine whether to request, direct or order me to refund fees to the borrowers? Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate or loan estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2) (b)?

(b) Were any subsequent good faith estimate or loan estimate disclosures of costs provided to the borrower no less than three business days prior to the signing of the loan closing documents? Additionally, was the subsequent disclosure accompanied by a clear written explanation of the change? Was the change due to a valid change of circumstance as allowed under RESPA?

(c) How were the costs disclosed in each good faith estimate or loan estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the applicable settlement statement or final HUD-1 exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate or loan estimate provided

to the borrower no less than three business days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

(17) If I failed to provide the initial good faith estimate or loan estimate under RCW 19.146.030 (1) and (2)(a) and (b) what action may the department take? If you have not provided the initial good faith estimate or loan estimate as required, including both delivery and content requirements, the department may request, direct or order you to refund to the borrower fees that inured to your benefit.

(18) If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW 19.146.030 (1) and (2), what action may the department take? If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

(19) Under what circumstances must I redisclose the initial disclosures required under the act? Generally, any loan terms or conditions that change must be redisclosed to the borrower no less than three business days prior to the signing of the loan closing documents. Some examples are:

(a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.

(b) The initial fixed period.

(c) Any balloon payment requirements.

(d) Interest only options and any changes to the options.

(e) Lien position of the loan.

(f) Terms and the number of months or years for amortization purposes.

(g) Prepayment penalty terms and conditions.

(h) Any other term or condition that may be specific to a certain loan product.

(20) If a loan application is canceled or denied within three days of application must I provide the disclosures required under RCW 19.146.030? If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

(21) Is a mortgage broker that table funds a loan exempt from disclosures? No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

(22) What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers? If you are unable to complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must provide the borrower with copies of the product from any third-party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the originals to the mortgage broker or lender within five business days of the borrower's request.

(23) **Must I provide a written fee agreement when I provide residential mortgage loan modification services?** Yes. You must provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. You must provide a copy of the signed fee agreement to the consumer and you must keep a copy as part of your books and records.

[Statutory Authority: RCW 43.320.040 and 19.146.225. WSR 19-21-142, § 208-660-430, filed 10/22/19, effective 11/24/19. Statutory Authority: Chapter 43.320 RCW, RCW 19.146.223. WSR 16-08-027, § 208-660-430, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 19.146.225. WSR 13-24-023, § 208-660-430, filed 11/22/13, effective 1/1/14. Statutory Authority: Chapter 43.320 RCW and RCW 19.146.223. WSR 12-18-048, § 208-660-430, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. WSR 10-20-125, § 208-660-430, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. WSR 09-24-091, § 208-660-430, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. WSR 09-01-156, § 208-660-430, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. WSR 08-05-126, § 208-660-430, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. WSR 06-23-137, § 208-660-430, filed 11/21/06, effective 1/1/07.]