

§ 3:1-16.5 Commitment process

(a) At or before issuance of a commitment, the lender shall disclose in writing the following:

1. The expiration date of the commitment;
2. The amount financed, which shall have the same meaning as that term is defined in Federal Regulation Z;
3. In the event the interest rate is not subject to increase before expiration of the commitment:
 - i. The finance charge, which shall mean the dollar amount the credit will cost the borrower;
 - ii. The annual percentage rate, which shall mean the cost of the credit to the borrower as a yearly rate; and
 - iii. The payment schedule, which shall mean the number, amounts and timing of payment scheduled to repay the obligation;
4. In the event the interest rate is subject to increase before expiration of the commitment:
 - i. The basis, index or method, if any, which will be used to determine the rate at closing. Such basis, index or method shall be established and disclosed with direct reference to the movement of an interest rate index or of a national or regional index that is available to and verifiable by the borrower and beyond the control of the lender; or
 - ii. A statement in at least 10-point bold type that "The interest rate will be a rate established by the lender in its discretion" followed by a statement in the same type indicating when the prevailing rate would be set and advising the borrower of his or her right to demand redisclosure of the rate and points pursuant to subsection (c) below once they are so set; and
 - iii. In addition to the requirements of (a)4i or ii above, the finance charge, annual percentage rate and payment schedule based on the rate at which a lender is closing or committing loans on the date the disclosure is made, together with a statement in at least the same size type as the disclosure, either immediately above or immediately below the disclosure, to the effect that:

"These figures are for illustrative purposes only. They reflect the rate now in effect, NOT necessarily the rate you will pay at closing, which will be established as indicated in this commitment."
5. The amount of the commitment fee, if any, and whether and under what circumstances the commitment fee shall be refundable, provided that, where applicable, the latter disclosure may be made by referencing either [3:1-16.6\(a\)](#) or [3:1-16.6\(b\)](#) of these rules;
6. All other fees yet to be paid by the borrower, including, but not limited to, warehouse fees and discount points, except that fees previously disclosed by the lender need not be redisclosed;
7. In the event the interest rate, annual percentage rate or term may vary after closing,
 - i. An identification and specification of the terms which are variable;
 - ii. The circumstances under which the above terms may change;

iii. Any limitation on a change;

iv. The effect of a change; and

v. An example of the payment terms that would result from an increase;

8. The time, if any, within which the commitment must be accepted by the borrower; and

9. Whether any fees or discount points charged by the lender and set forth in the commitment are subject to change before closing and, if so, the circumstances under which such fees or discount points may change.

(b) The information required to be disclosed in this section may be contained in one or more documents, for example, in a Federal Regulation X or Federal Regulation Z form disclosure and a supplement containing the information required under this section but not required by Regulation X or Regulation Z, as the case may be.

(c) The provisions of a commitment cannot be changed prior to expiration of the specified period within which the borrower must accept it. If any information necessary for an accurate disclosure required by (a) above is unknown to the lender at the time disclosure is required, the lender shall make the disclosure based upon the best information reasonably available to it and shall state that the disclosure is an estimate.

(d) If the interest rate (or initial interest rate in the case of a variable rate loan), discount points or fees charged by the lender and set forth in the commitment are subject to increase before closing, such terms shall be fixed no later than midnight of the third business day before the date the loan closes. The borrower may demand that the lender advise him or her, either orally or in writing, of such terms once they are so fixed and the lender shall promptly comply with any such demand. The right conferred by this subsection is not permitted to be modified or waived by the borrower except for a bona fide personal financial emergency. To modify or waive the right, the borrower shall give the lender a dated written statement that describes the emergency, specifically modifies or waives this right, and bears the signatures of all borrowers. Printed forms for this purpose are prohibited.

(e) A lender who commits to make a mortgage loan may assign the commitment to another lender authorized to make mortgage loans in this State, or allow another such lender to close the loan, provided that:

1. The lender who committed to make the mortgage loan shall obtain and maintain in accordance with its record retention schedule a copy of the mortgage note and the closing statement; and

2. The lender who committed to make the mortgage loan shall remain responsible for ensuring that the ultimate lender closes the loan in accordance with the terms and conditions of the commitment and applicable New Jersey and Federal laws and regulations.

HISTORY:

Amended by R.1992 d.149, effective April 6, 1992 (Operative for Federally-chartered financial institutions is June 5, 1992).

See: 23 New Jersey Register 2613(b), 24 New Jersey Register 3(a), 24 New Jersey Register 1380(a).

Amended by R.1994 d.559, effective November 7, 1994.

See: 26 New Jersey Register 3234(a), 26 New Jersey Register 4347(b).

[Chapter Notes](#)