OLD REPUBLIC TITLE

Frequently Asked Questions

CFPB's TILA-RESPA Integrated Disclosure (TRID) Rule

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CFPB's TILA-RESPA Integrated
Disclosure (TRID) Rule

Old Republic Title offers customized PowerPoint presentations for our agents so that you can "Show What You Know" to your lender and real estate agent clients. We have information, guidance and materials available for you to be a knowledgeable resource for your customers. The following are what we have found to be commonly asked questions from "Show What You Know" and other TRID training to help you with TRID implementation.

Note: The terms creditor and lender are used interchangeably in this document.

SECTION 1: GENERAL QUESTIONS

Do the provisions of the new Rule apply to private lenders?

The answer is yes and no.

There are two new Rules private investors must understand; first is the TILA-RESPA Integrated Disclosure (TRID) Rule and second is the Loan Originator (LO) Act.

The TRID Rule has an exemption for any lender making five or fewer loans per year. As an example, if it is a simple seller take-back or a parent/child transaction the TRID Rule will not apply; however, the LO Act may make this type of loan difficult to make. The LO Act can be found at http://www.consumerfinance.gov/regulations/loan-originator-compensation-requirements-under-the-truth-in-lending-act-regulation-z/

Do the provisions of the Rule apply to second mortgages?

Yes. There is actually an example of a form in the Rule showing that the proceeds from the second mortgage are brought over to Section L of the Closing Disclosure (CD) for the first mortgage.

Does the Rule apply to five-year residential loans?

The provisions of the Rule apply to most closed-end residential mortgages. Within the Rule there is a discussion as to why the CFPB decided to include two-year temporary construction loans so depending on the type of loan to which you are referring, the Rule may apply.

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Does the Rule cover vacant land and construction-to-permanent loans?

The Rule covers all closed-end residential mortgages if the money, property or service is used primarily for personal, family or household purposes and the debt is secured by a closed-end transaction secured by real property. Real property includes vacant land, construction-only loans and construction-to-permanent loans.

Page 1275 of the Rule cites:
"D. Coverage of the Final Rule
The integrated disclosure provisions do, however, apply to construction-only loans, vacant-land loans, and loans secured by 25 acres or more, although these transactions are currently exempt from RESPA coverage, because the Bureau believes that excluding these transactions would deprive consumers of the benefit of enhanced disclosures."

Page 1757 §1026.37(a)(9)(iii) of the Rule cites: *"Construction. Section 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for construction in transactions where the creditor extends credit to finance only the cost of initial construction (construction-only loan), not renovations to existing dwellings, and in transactions where a multiple advance loan may be permanently financed by the same creditor (construction-to-permanent loan). In a construction-only loan, the borrower may be required to make interest only payments during the loan term with the balance commonly due at the end of the construction project."*

The following sections in the Rule offer creditors guidance on how to complete the Loan Estimate (LE) for construction-to-permanent loans:
§ 1026.17(c)(6)(ii), comments 17(c)(6)-2 and -3, and appendix D to this part.

Does the form and related requirements apply to second homes and investment properties with 1-4 family units?

Yes it does if the property is deemed "residential" by the lender.

Service Provider Lists
If the creditor/lender requires a service only because it was mentioned in the Contract for Sale, does it trigger the creditor/lender's need to supply a list of service providers for that service?

CFPB's verbal response was, "yes." If the creditor/lender includes the requirement on their commitment, then it is deemed a loan requirement and the lender must comply with providing a list of service providers for that service. We asked, "what if the creditor/lender includes a simple requirement that the consumer must meet all of the requirements of the Contract of Sale but does not mention any specific services?" The CFPB representative said, "Nice try." He went on to explain that it doesn't matter how the creditor/lender learned about the service requirements or how it's worded on the commitment, they must comply with the additional provisions of the Rule if their loan is conditioned on meeting the requirement.

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Example: If the Contract of Sale requires the consumer to purchase a home inspection and then the creditor/lender mentions it directly or indirectly in the loan commitment, the creditor/lender must supply a provider list of home inspector(s).

SECTION 2: EXEMPT TRANSACTIONS

What types of transactions are exempt from the requirements of the new Rule?

HELOC, reverse mortgages, loans made by creditors making five or fewer loans per year (but they still have to deal with the Loan Originator (LO) Act), cash, commercial purpose loans, mobile home loans and no-interest second mortgages made for down payment assistance, and energy efficiency or foreclosure avoidance are all exempt. Most every other residential 1-4 family dwelling closed-end mortgage falls within the scope of the Rule.

I have a client who makes several purchase-money loans each year to investors who purchase residential properties for repair/improvement and resale. Will the client's lending activities fall under the Rule?

The Rule specifically exempts lenders who make fewer than five loans per year; however, your client will fall under the onerous Loan Originator (LO) Act if the loans are for residential purposes.

The LO Act can be found at http://www.consumerfinance.gov/regulations/loan-originator-compensation-requirements-under-the-truth-in-lending-act-regulation-z/.

How will the Rule affect commercial transactions? Under the Rule, will we be required to have two separate and distinct sets of forms between commercial transactions and residential transactions?

Commercial transactions do NOT fall under the provisions of the Rule. The form used for commercial transactions will most likely be dictated by the lender; however, check with your software provider to make certain that the current-HUD-1 and the ALTA Settlement Sheet are in your system for your use with exempt transactions.

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A lender asks if an investor (under a company name) who buys and sells houses is subject to follow the Rule. The investor finances the purchases with a bank loan, rehabilitates the residential property and then sells the property. Would this be considered commercial as long as the investor would not be living in the property as a residence but simply buys and sells it? In this scenario it would be considered commercial and exempt from the Rule, correct?

We should not opine on whether a property is considered commercial or residential. The definition of commercial follows other banking rules; the creditor will make that decision as to whether the transaction is exempt or not. There are different standards when it comes to multi-family dwellings as compared to single family homes and the investor should ask the lender's compliance department to be certain. Please also do not forget about the Loan Originator Act when it comes to individual lenders.

If a creditor/lender on a commercial transaction requires a mortgage on one of the parties' residences, does that mortgage fall under the provisions and requirements of TRID?

This was verbally answered by a CFPB attorney who said that as long as the "primary" purpose of the mortgage on the residential property is NOT for "personal, family or household purposes," it does not fall under the provisions of TRID.

Are transactions involving loans of 25 acres or more, construction-only loans and vacant land loans covered by TRID?

Yes. While these loans are currently exempt from mortgage disclosure requirements under RESPA and Regulation X, the TRID Rule includes them depending on the primary purpose of the loan. The loan is included as a "consumer credit transaction" if the money, property or services is used primarily for personal, family or household purposes and the debt is secured by a closed-end transaction secured by real property.

The CFPB believes that covering all real estate-secured closed-end consumer credit transactions (other than reverse mortgages) would eliminate the guess work for lenders as to which loans are covered and which loans are exempt while providing consumers with the best information available to make their decisions.

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SECTION 3: LOAN ESTIMATE (LE)

Does this replace the Truth in Lending (TIL) Disclosures?

For covered transactions, yes. There is a Part A to the new form called the Loan Estimate (LE) that replaces the early TIL and the Good Faith Estimate (GFE). Part B, the Closing Disclosure (CD) replaces the final TIL and the HUD-1.

May lenders charge for pre-approvals and when is the application fee charged?

The lender may not charge anything at the time of loan application except a reasonable credit report fee. The lender may not delay the delivery of the LE once the six elements that define an application are received. After delivery of the LE **and** after the consumer gives an indication that he/she wants to proceed with the loan, the lender may charge additional fees.

> ***The Rule states: "Limitation on fees. Consistent with current law, the creditor generally cannot charge consumers any fees until after the consumers have been given the Loan Estimate form and the consumers have communicated their intent to proceed with the transaction. There is an exception that allows creditors to charge fees to obtain consumers' credit reports." This provision is in § 1026.19(e)(2)(i).***

A lender asks would it be possible to have an explanation for the "last day the creditor may revise Loan Estimate (LE) from contract info?"

The creditor must ensure that the consumer receives the revised LE no later than four business days prior to consummation. If the creditor is mailing the LE and relying upon the "mailbox rule," the creditor would need to place the LE in the mail no later than seven business days before consummation of the transaction to allow three business days for receipt. § 1026.19(e)4 If there are fewer than four business days in between the time the revised LE would have been required to be provided to the consumer and consummation, creditors may provide consumers with a Closing Disclosure (CD) reflecting any revised charges resulting from the changed circumstance and rely on those figures (rather than the amounts disclosed on the LE) for purposes of determining good faith and the applicable tolerance. (Comment from 19(e)(4)(ii)-1)

What are the six elements that trigger a loan application has been received and then requires the lender issue the Loan Estimate (LE) within three business days?

Address of Property
Loan amount sought
Income
Estimated Value
Name
Social Security Number

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Since Washington DC likes acronyms so much, you can easily remember the six elements by its acronym = A.L.I.E.N.S.

SECTION 4: 3-DAY REVIEW PERIOD

After reading more on the Closing Disclosure (CD): Does the three-day time period also apply to the closing documents from the lender or is it just the CD? If the closing is mailed away, we usually need the package ready several days before closing. Will the three-day time period apply three days before we need the package to send out or is it still three days before closing?

The CD is the disclosure document required to be delivered prior to closing not the entire closing package. Therefore you are going to have to do what you are likely doing now: stay in close communication with the lender in order to get everything you need when you need it.

What determines whether the Closing Disclosure (CD) form was delivered three days in advance?

The lender is responsible for the delivery of the CD but the Rule allows the lender to designate another party to handle the delivery. Because the requirement is so strictly defined and the penalties so severe, it is believed that most lenders will make the delivery and not allow another party to deliver. We, as the closing industry, are not responsible to "police" the delivery but need to be cautious if we hear something contrary to the Rule. With regard to the specifics of calculating the three day advance disclosure requirement, the mailing rule and the definition of business day come into play. If the CD is not hand-delivered (or delivered in a manner that affirmatively confirms delivery to the consumer) then an additional three days are added to the time period. This is the case even if the document is sent electronically (and for all practical purposes is almost always transferred to the recipient's inbox instantaneously). The definition of a "business day" as it applies to the delivery of the CD differs from the definition used for the delivery of the Loan Estimate (LE). A business day for CD purposes is all calendar days other than Sundays and the 10 federal holidays. Therefore, Sundays and the 10 federal holidays must be removed from the count. If you do not hand deliver the CD, the time period will most typically expand to seven days in advance of closing (three days in transit, three days for review plus one Sunday or federal holiday when applicable).

Does the borrower receive the Closing Disclosure (CD) three days in advance or at closing?

The borrower (now called the Consumer) MUST receive the final CD at least three business days in advance of closing or we may not close. The lender is responsible and liable for the delivery but we will need to supply our fees, adjustments and invoices to the lender well in advance if the lender is going to input the numbers. We need to create processes within our

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operations to supply the numbers at least seven days in advance so that the lender may complete the form and meet the delivery requirement. See prior answer for more on this issue.

I thought that the whole process was that NOTHING changed after the delivery of the Closing Disclosure (CD).

You are thinking of the original proposal by the CFPB in the draft of the Rule. Because of the American Land Title Association's (ALTA) massive effort (along with the help of a number of our related industry professionals) to convince the CFPB that delaying closing for minor changes would cause chaos and harm both buyer and seller, the final Rule states that under only three circumstances will the three-day review period be re-triggered.

Does the three-day review period retrigger mean that the loan has to be re-approved? What are the three changes that would cause a re-triggering of the three-day review period?

It is possible since the three triggers for re-disclosure and a new three-day waiting period are major occurrences the loan will have to go back to underwriting. The three instances where a new review period is required are:

1) If a pre-payment penalty is added,
2) If the loan product changes, or
3) If the APR increases beyond the allowable limit.

Do the regulations in the Rule affect the three-day right of rescission on refinances or do the borrowers get three days prior to signing plus three days after?

The three-day right of rescission does not change with the new Rule. Therefore the consumer will have three days prior to consummation to review the fees, terms and charges and three days after consummation to reconsider the entire loan offering.

If a consumer writes a statement specifically waiving their right to the three-day review is there a provision to allow for this?

There is a provision in the Rule stating that the borrower can waive the three-day waiting period after they receive the Closing Disclosure (CD) or the revised CD ONLY if the borrower has a *Bona Fide Personal Financial Emergency.* The phrase is undefined but they give one example, "[t]he imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency." This is a very high bar to set and within the Rule the CFPB is concerned about expanding the use of waivers fearing that any expansion will lead to abuse. This waiver request must be in writing and must provide details for the basis of the request. It will be up to the lender to determine if a waiver will be permitted. A borrower may not waive the review period on behalf of the seller.

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Someone read that it is up to the lender whether or not they would need to re-disclose the Closing Disclosure (CD).

The need to re-disclose and the retriggering of the three-day review period depend on the reason for which the credit/adjustment is required. If it is a credit that MAY affect the value or a credit on which the appraiser must opine then the Equal Credit Opportunity Act (ECOA) may be triggered which requires the delivery of the final appraisal to the consumer three business days prior to consummation. Therefore, if the appraisal must be rewritten and re-delivered we MAY have to give the consumer three days to review the revised appraisal. Many small items affect the appraised value and it is in those circumstances where the creditor may need to stop the closing.

How do I handle the situation if the consumer states that they never received the Closing Disclosure (CD)?

Simply call the lender and tell them the consumer states that they did not receive the CD in advance and then inquire if the lender would like you to proceed. Remember, if the lender used the "mail-box method" of delivery (either mailing or emailing the CD seven days in advance); there is a presumption in the Rule that the consumer received the CD without requiring proof of receipt. Therefore, it is entirely possible that the lender met its obligation but the CD got lost in the mail/email.

How do I handle the situation if the consumer states that they never received the Closing Disclosure (CD)?

Our original FAQ answer to the above question is in italics below and updated information follows it.

Simply call the lender and tell them the consumer states that they did not receive the CD in advance and then inquire if the lender would like you to proceed. Remember, if the lender used the "mail-box method" of delivery (either mailing or emailing the CD seven days in advance); there is a presumption in the Rule that the consumer received the CD without requiring proof of receipt. Therefore, it is entirely possible that the lender met its obligation but the CD got lost in the mail/email.

Remember, it is not up to the settlement industry to police the delivery if made by the lender.

Since this FAQ was written, industry has heard that in order to make certain the three-day rule is met, some lenders may be issuing a CD soon after issuing the Loan Estimate (LE) at the onset of the mortgage process. In some cases the initial CD is being delivered to the consumer 45 days in advance of settlement. We find nothing in the written words of the Rule that prohibits this procedure though some may wonder how the inevitable changes and updates are handled.

If the initial CD becomes inaccurate, the lender does not violate the Rule as long as the lender

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provides an accurate CD at the time of consummation. See §1026.19 (f)(1)(i)-1 on page 1718.If the APR becomes inaccurate (or a prepayment penalty is added or the loan product changes); however, the lender is required to meet the 3-day review requirement again. All other changes are permitted close to or at the time of consummation without triggering a new review period.

What about tolerances? Once the CD is issued, the lender may not revise the LE even with a changed circumstance; however, the lender, under certain circumstances, may avoid a tolerance violation by simply revising the CD.

Therefore, if the lender determines that there is a need for a change after the initial CD is delivered, the lender may send a revised CD reflecting the new fees and charges before or at consummation as long as the initial CD was delivered at least 3 business days in advance. How does the lender know what fees will be charged at consummation so far in advance? Estimates are permitted as long as the lender has performed its due diligence to obtain the fees. See 1026.19(f)(1)(i)-2(i)(B)(ii) on page 1720 where the Rule describes due diligence as "using the best information reasonably available even though the creditor knows that more precise information will be available at or before consummation."

Specifically addressing the need to revise the CD after the initial was delivered without triggering a new three-day review period (except in the three circumstances mentioned above) is Section 1026.19(f)(2), page 1728 which states, "[I]f the disclosures provided under § 1026.19(f)(1)(i) become inaccurate before consummation….. the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation."

Therefore when a consumer tells you they don't recall receiving the CD, it is very possible they received it but it was so long ago they don't remember. When confronted with this circumstance consider the FAQ recommendation (excerpted in italics in the second paragraph) before challenging the practices of the lender in front of the consumer.

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SECTION 5: CLOSING DISCLOSURE (CD)

There are challenges with the real property taxes on the Closing Disclosure (CD). It seems clear if the lender requires the current year's taxes be paid in advance yet the taxes are not yet due from the seller in a sale transaction, the taxes are reflected in Section F (Prepaids). If it is a property tax lien recorded against the property for back taxes owed by the seller, it is reflected in Section N (due from seller at closing).

On a refinance transaction, what if the borrower needs to pay the current year's property taxes, back taxes or a tax lien? Would they appear in Section F (Prepaids) or in Section H (Other)?

The easiest answer is the individual creditor may dictate how they want it shown on the CD but in absence of that, here is an example of how you may choose to show these fees:
Section F: The Rule specifically states that the "Prepaids" Section is for prepaid items to be paid by the consumer in advance of the first loan payment. Since the Rule states that this section is for items owed by the consumer then it would seem that seller-pay items do not belong in this section (even though the seller's column runs through it). §1026.38(g)(2)

Section H is for costs incurred by the consumer or seller not required to be disclosed on the Loan Estimate (LE) (other than the Owner's Title Insurance premium) or not required to be paid by the creditor. §1026.38(g)(4) One could argue that the creditor DOES require the outstanding taxes be paid but in reality, WE require that they are paid to protect the lien position of the loan. Section H seems an appropriate place if they are being paid by the seller.

Section N, lines 1-13 are reserved for payment of liened items.

Will the 10% tolerance levels be a part of the new Rule?

Both the zero tolerance and 10% tolerance buckets will remain in effect under the new Rule; however, the zero tolerance bucket has expanded. Now added to the zero tolerance bucket items are fees paid to any affiliates of the lender. As an example, if the lender owns 25% or more of the title company used then the title fees fall into the zero tolerance bucket, meaning the fees charged at closing must equal exactly what was estimated on the last Loan Estimate (LE). As an aside, the new Rule now refers to tolerances as "variances."

Where will we show payments to construction subcontractors on the Closing Disclosure (CD)? What if there aren't enough lines?

Section H, "Other," should be used to pay for items that have nothing to do with the loan and if there isn't enough room on the form, the Rule specifically allows for additional lines to be added up to a certain number per section. In addition, if there still isn't enough room, the Rule allows for addendums as long as formatting requirements are followed.

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Will we still use the HUD-1 along with the Closing Disclosure (CD)?

The HUD-1 may NOT be used on any of the covered loans; however, you will want your software provider to leave the current HUD-1 and have them add the ALTA Settlement Sheet on your system for use in transactions involving HELOCs, reverse mortgage, cash, commercial and any other exempt transactions and for any covered transactions opened prior to the implementation date of October 3, 2015.

Who prepares the form?

The Rule grants the creditor the option of preparing the Closing Disclosure (CD) or using a third party for this task. Each creditor will make the decision as to whether they will prepare the CD internally or they will allow an outside entity to prepare the form. The lender will prepare the Loan Estimate (LE).

Can we overwrite the dollar amount where the recording fees are to add other fees such as recording of Municipal Lien certificate or discharge of mortgage?

The Rule allows us to itemize transfer fees in Section E but not recording fees other than the deed and mortgage. We are directed to lump all "other" recording fees together and include in the total with the total for the deed and mortgage. However, the ALTA Settlement Statement will allow for itemization of each recorded document as well as the accurate disclosure of the title fees.

Where on the Closing Disclosure (CD) would you list leasehold transfer fees?

If the fees are due to a government authority they will go on lines in Section E on Page 2 of the CD. Even though the forms show only a few available lines, the Rule allows us to add lines to this section to accommodate the itemization of all transfer fees. The "payee" listed on the CD must be the name of the authority who assessed the fee and not a service company who performs e-recordings (if applicable).

Where on the Closing Disclosure (CD) do we put the seller's mortgage payoffs?

According to the Rule, any payoffs for seller liened items appear in Section N (on Page 3 of the combined CD and on Page 1 of the seller-only form). This is only for items that are liened at the time of consummation and not for items that may become liened at a later date.

Where should premium taxes be listed on the Closing Disclosure (CD)?

Care must be taken in determining the placement of governmental premium taxes on the CD. At first blush it would seem that a governmental fee such as a premium tax would be placed in "Section E: Taxes and Governmental Fees" on the CD. However, in accordance with the Rule, only taxes/fees that are based on either the sale price or the mortgage amount and considered

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Transfer Taxes may be listed in Section E (along with recording fees).
Page 1798: § 1026.37(g)(1) through (3). "3. Transfer taxes – terminology. In general, transfer taxes listed under § 1026.37(g)(1) are State and local government fees on mortgages and home sales that are based on the loan amount or sales price, while recording fees are State and local government fees for recording the loan and title documents."

If the premium tax is based on the title premium, it does not seem to fit with the allowable fees in Section E. The state of Kentucky, as an example, has a Municipal Premium Tax based on a percentage of the title premium. "The premium tax is a pass through tax. The tax must be charged to the purchaser of the title insurance policy and added to the regular premium for that policy." OR bulletin dated 7/1/2015.

Based on this information in the Rule, it leaves Sections B or C (depending on the circumstances) for the collection and disclosure of the premium tax attributable to the Loan Title Policy premium and Section H for the collection of the premium tax attributable to the Owner's Title Policy premium.
Please seek guidance from your lender regarding their determination for the placement of the premium taxes as defined above and if they are unsure you are welcome to share section §1026.3.7(g)(1) – (3) with them on page 1798 of the TRID Rule.

How are last-minute changes made to the seller's side of the Closing Disclosure (CD) that do not affect the buyer's numbers?

It depends. If the creditor/lender is inputting the numbers onto the CD and uses the combined buyer-seller form, you will need to ask them to make any and all changes or get permission from them to make changes. Most lenders have indicated that they will be delivering only the borrower's side of the CD and will rely solely on the closing/escrow industry to provide the seller's CD. The Rule specifically tasked the closing/settlement industry with the responsibility of preparing and delivering the seller's side. If the lender is inputting the numbers and uses the buyer-only form, this will allow you to create and use the seller-only form, leaving you the opportunity to make the changes instantaneously. However, most lenders will require you to obtain their authorization prior to making any changes to the seller's side of the CD. Be sure to talk to your lender(s) about this. If we prepare and deliver the seller-only CD, we are required to supply the lender with a copy of the seller-only form. There is no delivery requirement regarding the seller's portion of the CD or the seller-only form prior to consummation. The TRID Rule states that the delivery of the seller's side must be made at the time of consummation.

Sometimes the closing fee is reduced at the time of settlement. Will this create a problem under the TRID Rule?

The reduction of fees under the TRID Rule creates two issues. First, if the fee is included in either the zero tolerance bucket or the 10% tolerance bucket, a reduction does not cause a tolerance issue. However, it the lender is inputting the numbers onto the CD the logistics of physically accomplishing the change remains the challenge. You will have to call the lender,

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make the request and wait for the revised CD to be created and delivered to you.

Are title endorsements placed on separate lines on Page 2 in Section C or do they roll-up to Lender's Title Insurance?

If the Endorsements are for the loan policy, the loan title fees will appear in either Section B or C depending on the circumstances*; however, roll-ups are not used on the Closing Disclosure, only itemization. Therefore, endorsements will each appear on separate lines and will be listed starting with "Title -" and then a description of the endorsement. Remember, all fees will be shown in each section in alphabetical order.
**Loan title fees will be shown in Section B if the consumer is given the option to shop for title and they choose a title provider that is on the lender's "Provider List" or if the provider is an affiliate (under the definition of affiliate) of the lender or mortgage broker. Loan title fees will appear in Section C if the consumer is permitted to shop and the chosen provider is not listed on the lender provider list* (or is not an affiliate of the lender or mortgage broker).

Is it a requirement that the closing/settlement fee is itemized or can it continue to be shown by the roll-up method?

Roll-ups will no longer be permitted. Each individual fee must be itemized in the appropriate section in alphabetical order and begin with "Title –" and then the fee name.

Where do the document stamps, etc. appear on the new Closing Disclosure (CD)?

All government fees will be itemized in Section E on Page 2 of the CD. The jurisdiction collecting the fee should be listed, not the payee if it is different. This is recognition that many use e-recording services and write the actual check to the e-recording company instead of to the county clerks. Section E does not have many lines but the Rule allows for the addition of lines when necessary and for the removal any unused lines (except line A01).

Where are the buyer's and seller's signature lines on the Closing Disclosure (CD)?

The Rule does not require signature lines from either the buyer or the seller; however, if the lender requires a confirmation, the signature line must contain the promulgated wording. Many software providers are considering adding an additional page, but if the escrow or closing company uses the ALTA Settlement Statement in addition to the CD, signature lines are provided on the ALTA Settlement Statement with authorization language to proceed.

Is it true that the closing/settlement provider may not give a copy of the Closing Disclosure (CD) to real estate agents?

Since the CD is considered a loan document, that determination is up to the lender. Most lenders have stated that they will give a copy of the completed CD to the settlement company and the borrower and if the borrower wants their real estate agent, attorney, or CPA to have it, then the borrower will have to supply it.

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Because the CD contains NPPI (Non-Public Personal Information), we should be cautious and follow the lender's instructions. On June 9, 2015, Bank of America answered a similar question by saying "Bank of America will distribute the buyer/borrower's Closing Disclosure to the borrower(s), while the settlement agent is responsible for preparing and delivering the seller's Closing Disclosure. The settlement agent should continue the practice of providing the Closing Disclosure to the Real Estate Agent(s) involved in the transaction, as applicable." Since Bank of America indicates the settlement agent is responsible for the seller's CD it leads us to believe that their comment about sharing the CD with the real estate agents is referring to the seller's CD only. But we do not know for certain. Publically, Wells Fargo has said we may NOT give a copy of the CD to third parties involved in the transaction.

On July 9, 2015 Bank of America advised "providers" that they should follow "state or local laws as well as any applicable provisions of the sales contract when determining how/if to share the borrower's and/or seller's" CD. But what if the letter of instructions from the lender contains prohibitive language?

Recognizing this issue and many other issues created by the provisions of the Rule, ALTA created a shareable settlement disbursement form called the ALTA Settlement Statement (ALTA SS). When ALTA talked about the benefits of using the ALTA SS in conjunction with the CD it said, "It is a form that can be shared with the interested parties (REALTORS®, Attorneys, CPAs, etc) as the CD is a loan form and the majority of lenders will not permit its distribution to anyone except the borrowers." Perhaps the answer is to utilize the ALTA SS (in a bifurcated format) so that you have a form that can be shared with all parties. The ALTA SS also provides the ability to itemize recording fees beyond the deed and mortgage/deed of trust and to secure approval of the numbers as well as approval to disburse by including signature lines, none of which is included on the CD. However, with the overwhelming national concern over sharing any personal information these days you may want to consider getting an authorization signed by the buyer and seller before you share the ALTA Settlement Statement with other parties.

On Page 5 of the Closing Disclosure (CD) there is a box entitled "Contact Information." Who should be listed in the Real Estate Broker and Settlement Agent sections and what License IDs should be used?

The CFPB's goal for requiring the listing of contact information is so that the consumer has easy access to the appropriate parties with any questions they might have at the time of receipt and post-closing.

The columns labeled "Real Estate Broker (B)" (buyer) and "Real Estate Broker (S)" (seller) should contain the name and address of the brokerage house along with the state license number for the firm. If only one Real Estate Broker is involved in the transaction, the non-applicable column may be deleted. The form also requires the listing of the individual or "Contact" with whom the consumer has the most interaction, normally the individual real estate agent. The real estate agent's state license number must also be listed along with an email address and phone number.
License number is defined in the Rule on Page 1871 as Section 1026.38(r)(3) and (5) requires

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"the disclosure of a license number or unique identifier for each person (including natural persons) identified in the table who does not have a NMLSR ID if the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such person's business activities has issued a license number or other unique identifier to such person under § 1026.38(r)(3) and (5). The space in the table is left blank for the disclosures in the columns corresponding to persons who are not subject to the issuance of such a license number or unique identifier to be disclosed under § 1026.38(r)(3) and (5); provided that, the creditor or settlement agent may omit the column from the table or, if necessary, replace the column with the contact information for an additional person."

The Settlement Agent's column follows the same set of rules. The company name, address and state license number (if applicable) is entered first and then the "Contact" should be the person the consumer can contact with questions about the transaction. The contact's state license number (if applicable), email address and phone number must also be listed.

For attorneys who perform closing services, the Rule mentions on Page 1872 that "if the closing attorney employed by the settlement agent disclosed under § 1026.38(r)(1) has a State-issued settlement agent license number, but the consumer meets with the attorney's assistant to fill out any necessary documentation prior to the closing and to answer questions, the closing attorney's name is disclosed under § 1026.38(r)(4) because the assistant is only performing clerical functions."

When a transaction has two simultaneous mortgages are one or two Closing Disclosures used?

When conducting a transaction with two simultaneous mortgages, the primary lender will make the decision as to whether they will prepare one Closing Disclosure (CD) or two. The Rule discusses the disclosure and placement of the proceeds from the subordinate loan on the primary loan's CD when two CDs are being utilized.

Form H-25(C) shows the placement of the net proceeds from the subordinate loan in Section L on Page 3. The Rule specifically states if the subordinate lien is being credited as net proceeds, the principal amount should be listed on the same line. On Page 1073 of the Rule at § 1026.38(j)(2)(vi)(2) the following is cited:

"2. Subordinate financing proceeds. Any financing arrangements or other new loans not otherwise disclosed pursuant to § 1026.38(j)(2)(iii) or (iv) must also be disclosed pursuant to § 1026.38(j)(2)(vi). **For example, if the consumer is using a second mortgage or note to finance part of the purchase price, whether from the same creditor, another creditor, or the seller, the principal amount of the loan must be disclosed with a brief explanation. If the net proceeds of a second loan are less than the principal amount of the second loan, the net proceeds may be listed on the same line as the principal amount of the second loan.** For an example, see form H-25(C) of appendix H to this part." [continued on next page]

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Summaries of Transactions Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION	
K. Due from Borrower at Closing	
01 Sale Price of Property	
02 Sale Price of Any Personal Property Included in Sale	
03 Closing Costs Paid at Closing (J)	
04	
Adjustments	
05	
06	
07	
Adjustments for Items Paid by Seller in Advance	
08 City/Town Taxes to	
09 County Taxes to	
10 Assessments to	
11	
12	
13	
14	
15	
L. Paid Already by or on Behalf of Borrower at Closing	
01 Deposit	
02 Loan Amount	
03 Existing Loan(s) Assumed or Taken Subject to	
04 Second Loan (Principal Balance $100,000)	$96,500.00
05 Seller Credit	
Other Credits	
06	
07	
Adjustments	
08	
09	
10	
11	
Adjustments for Items Unpaid by Seller	
12 City/Town Taxes to	
13 County Taxes to	
14 Assessments to	
15	
16	
17	
CALCULATION	
Total Due from Borrower at Closing (K)	
Total Paid Already by or on Behalf of Borrower at Closing (L)	
Cash to Close ☐ From ☐ To Borrower	

SELLER'S TRANSACTION	
M. Due to Seller at Closing	
01 Sale Price of Property	
02 Sale Price of Any Personal Property Included in Sale	
03	
04	
05	
06	
07	
08	
Adjustments for Items Paid by Seller in Advance	
09 City/Town Taxes to	
10 County Taxes to	
11 Assessments to	
12	
13	
14	
15	
16	
N. Due from Seller at Closing	
01 Excess Deposit	
02 Closing Costs Paid at Closing (J)	
03 Existing Loan(s) Assumed or Taken Subject to	
04 Payoff of First Mortgage Loan	
05 Payoff of Second Mortgage Loan	
06	
07	
08 Seller Credit	
09	
10	
11	
12	
13	
Adjustments for Items Unpaid by Seller	
14 City/Town Taxes to	
15 County Taxes to	
16 Assessments to	
17	
18	
19	
CALCULATION	
Total Due to Seller at Closing (M)	
Total Due from Seller at Closing (N)	
Cash ☐ From ☐ To Seller	

CLOSING DISCLOSURE PAGE 3 OF 5 • LOAN ID #

If the lender chooses to show both the primary and subordinate loan on one CD, the lender will determine how to disclose the costs associated with the subordinate loan. The spirit of the Rule for transparency leads us to believe that all fees will be set out separately with descriptive designations; however, your lender will decide.

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Does an attorney fee for the consumer's legal representation have to appear on the Loan Estimate (LE) and the Closing Disclosure (CD)?

When reading the Rule as it applies to the inclusion of attorney's fees on the LE and CD we find that in order to meet the good faith requirement a lender must include an attorney's fee "if the subject property is located in a jurisdiction where consumers are customarily represented at closing by their own attorney, even though it is not a requirement…" Found in section 1026.19(e)(3)(iii) on page 1707.

Contact your compliance advisor when reviewing the above sections from the Rule before making a determination as to what you must disclose on the CD and when disclosure is not required.

Do I have to show the buyer's purchase of the lawn mower on the CD?

As to the lawn mower and other such dealings, the Rule defines the items that must be shown in section H "other" on the LE and the CD as follows:

On the LE "an itemization of any other amounts in connection with the transaction that the consumer is likely to pay or has contracted with a person other than the creditor or loan originator to pay at closing and of which the creditor is aware at the time of issuing the Loan Estimate." Found in section 1026.37(g)(4) on page 1418.

On the CD "an itemization of each amount for charges in connection with the transaction that are in addition to [origination fees and lender required services] for services that are required or obtained in the real estate closing by the consumer, the seller, or other party… and the total of all such itemized amounts that are designated borrower-paid at or before closing." Found in section 1026.38(g)(4) on page 1441.

Contact your compliance advisor when reviewing the above sections from the Rule before making a determination as to what you must disclose on the CD and when disclosure is not required.

Are title and escrow fees bundled on the Closing Disclosure (CD)?

Though we cannot give legal advice, we would like to share some of our observations taken from the TRID Rule regarding the bundling of fees on the CD.

On Page 25 of the Rule, the Bureau related the thought process used in developing the TRID disclosure forms, discussing the 2008 decision to prohibit itemization of certain fees. However, the Rule commentary states that the decision to combine fees caused confusion for consumers when comparing loan products and that many settlement agents were asked to breakdown the fees on separate addenda. The decision was then reached to require itemization once again. Of the CD the CFPB said, "The law further requires that the form conspicuously and clearly itemize

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all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement…."

Sections A (Services required by the lender for which the consumer cannot shop), B (Shop-able items required by the lender for which the consumer chose not to shop), C (Required services for which the consumer did shop) and H (Other) on the CD were reviewed as the sections where settlement and escrow services will be listed.

(1) *Origination charges. [Section A]* An itemization of each amount paid for charges described in § 1026.37(f)(1), the amount of compensation paid by the creditor to a third-party loan originator along with the name of the loan originator ultimately receiving the payment…

(2) *Services borrower did not shop for. [Section B]* An itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer did not shop…

(3) *Services borrower did shop for. [Section C]* An itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer shopped…

(4) *Other. [Section H]* An itemization of each amount for charges in connection with the transaction that are in addition to the charges disclosed under paragraphs (f) and (g)(1) through (3) for services that are required or obtained in the real estate closing by the consumer, the seller, or other party,….

We offer this information to assist you in making a decision about combining fees for services required by the lender. The spirit of the Rule certainly leads one to believe that itemization of services is the preferred method of disclosure.

SECTION 6: COMMUNICATING WITH CREDITORS

Some title agents in our area provide a preliminary HUD-1 to their clients showing the lender's and the title agent's estimated fees. This preliminary HUD-1 can be provided to the buyer and seller up to two weeks prior to closing. The final HUD-1 is provided 24 hours prior to closing. Do you see this practice continuing with the new Rule?

The problem with doing a preliminary Closing Disclosure (CD) in the future is that you will not know which box to put the fees in unless you know whether or not your company is listed on the provider list given to the consumer by the creditor. If your company is on the provider list, then your loan policy fees will go in Box B (of the CD) but if you are not on provider list, the

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loan policy fees will go in Box C. You may want to consider sending your charges on a form other than a preliminary CD, such as the ALTA Settlement Statement.

In addition, the CD contains Non-Public Personal Information (NPPI) and chances are you will not be permitted by the lender to give the CD to anyone except the borrower. You may want to consider using the ALTA Settlement Statement in addition to the CD. However, with the overwhelming national concern over sharing any personal information these days you may want to consider getting an authorization signed by the buyer and seller before you share the ALTA Settlement Statement with other parties.

What should we do if…?

When the 2010 RESPA Reform Rule went into effect, specific direction was given from HUD about what to do if a lender's instructions appeared to be contrary to the Rule. At that time, HUD advised a three-step approach: 1) explain to the lender why we felt their interpretation of the Rule was incorrect, 2) request the lender's contrary instruction in writing to document in our file, and 3) follow the lender's instruction so long as fraud was not involved.

Our industry asked the CFPB for guidance should a similar circumstance occur under the new TRID Rule, "what should a settlement company do if a lender directs them to do something that the settlement company feels is in violation of a provision in the TRID Rule?" To-date the CFPB has not provided any answer on how to handle such a situation, nor has the CFPB affirmed HUD's prior instructions from 2010 as an acceptable way to proceed.

We continue to await the CFPB's response and will immediately advise you if additional direction is given by the CFPB. As the TRID Rule is now in effect, you may want to consider consulting counsel and always be certain to document your files carefully.

SECTION 7: OWNER'S TITLE INSURANCE PREMIUM

Owner's Title Insurance Modifier: If the borrower elects not to have Owner's Title Insurance, we are able to proceed [in our state] since there is a mortgagee policy being issued. In this instance, would we charge full premium for the loan policy? Also, why would the borrower elect not to have a policy that the seller pays for (in many areas) and the seller would then have to provide additional money out-of-pocket at closing since the loan policy will not be simultaneously issued?

The good news is the Rule specifically allows IF THE SELLER is paying for the owner's portion of the premium, then the modifier "optional" does not need to be included. This should allow you to avoid the conversation all together, even though you could easily opine on the benefits of owner's protection.

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Why is the owner's policy listed in the "Other" Section (Section H)?

That portion of the title premium attributable to the owner's policy (per the required calculation method) must be listed in Section H and the modifier "optional" must be on the same line IF the consumer/borrower is paying for any portion of the owner's policy. If the seller is paying for the owner's portion of the title premium, the word "optional" as a modifier is not required. This is the only place that the calculated owner's premium may appear unless Owner's Title Insurance is required by the lender in which case the fee will be disclosed in either section B or C depending on the circumstances. Remember, cash and commercial transactions *do not* fall under the provisions of the Rule; therefore, no modifier is required. Be prepared to discuss the benefits of an Owner's Title Insurance Policy, which is the only protection consumers could receive for their interest in the property as the Lender's Title Insurance Policy is protection for the lender only.

If Owner's Title Premium is listed on the Closing Disclosure (CD) as "optional" will this eliminate the need to have buyers sign the more detailed "Notice of Availability of Owner's Title?"

The Rule does not address these notices, but the use of the word "optional" makes it more likely that Notices of Availability of Owner's Title will continue in jurisdictions which now require its use and expand to those that currently do not use such notices. One hopes that no purchaser ever waives the owner's title protection. The title industry is making a concerted effort to better educate the consumer and others on the value of title insurance, which will hopefully be effective in diminishing the instances where a consumer elects not to obtain Owner's Title Insurance.
Perhaps there should be a caveat with respect to Owner's Title Insurance - optional "at your own risk."

On the sample Closing Disclosure (CD) in the Rule, there is a "rebate" shown on Page 3 of the CD. Is that an attempt to correct the incorrect title fee calculation? If not, what is it?

No, it is not an attempt to correct the inaccurate way the CFPB requires title insurance premiums to be calculated. The CFPB has not confirmed the reason a rebate is shown in the sample CD, although it could be a way for the CFPB to illustrate the Butler Rebate in Florida. Florida allows the consumer to negotiate the agent's portion of the title premium and if there is a "rebate," it may be shown as a rebate on the CD.

Attempts to correct the inaccurate calculation of the title premium on the CD must be carefully worded. Make the correction by crediting and debiting the appropriate parties on Page 3. Using words such as "adjustment" or "credit" may trigger a Qualified Mortgage (QM) issue with the loan. Lenders will decide how the correction should be labeled; therefore, discussing it with them now will help everyone be prepared for implementation and for use on the CD.

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Is the charge for an Owner's Title Insurance Policy from an affiliated provider subject to tolerance category?

The Rule contains conflicting information; first, the misleading part of the Rule is found in the preamble at pages 364-365 which states: "With respect to the question whether proposed § 1026.19(e)(3)(iii) would have included fees paid to lender affiliates for an optional settlement service, charges for third-party services not required by the creditor (other than owner's title insurance) are not subject to a tolerance category, even if a lender affiliate provides them." [Emphasis added.]
However, an attorney from the CFPB shared that minute 32 of the August 26, 2014 webinar addressed the question directly. The webinar can be heard by visiting the CFPB website: https://consumercomplianceoutlook.org/outlook-live/2014/FAQ-on-TILA-RESPA-Integrated-Disclosures-Rule/.
During the webinar, the presenter is asked the question about whether or not the Owner's Title Insurance premium is subject to any tolerance categories, then answered with a qualified "no" and went on to include that his answer also reflected the Rule's direction "even if it is paid to an affiliate of the creditor." The qualification in his answer included:

1) as long as the Owner's Title Policy was not REQUIRED by the creditor;
2) as long as the fee is disclosed with the modifier "optional"; and
3) as long as the creditor acted in good faith when it disclosed the fee on the LE.

The above leads us to read 1026-19(e)(3)(iii) in the Rule:
"Good faith requirement for non-required services chosen by the consumer. Differences between amounts of estimated charges for services not required by the creditor disclosed pursuant to §1026.19(e)(1)(i) and the amounts of such charges paid or imposed on the consumer do not constitute lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time disclosure was provided."

SECTION 8: SELLER

If the combined Closing Disclosure (CD) form is chosen will the lender input the seller's info?

Probably not, but each lender will have their own set of guidelines. It might make sense for you to consider using the bifurcated form (seller-only form) in your operation so that seller-only changes at the table may be completed by your shop once you have obtained lender approval. The Rule does say that a copy of the seller-only form must be provided to the lender after closing.

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Is the lender in charge of the seller-side?

No. The Rule specifically states that the title/closing industry is responsible for the seller's Closing Disclosure (CD).

The lender insists on preparing the seller's Closing Disclosure. What do I do?

The Rule requires that the settlement agent provides the seller's side of the CD. If a lender is challenging the settlement agent's right to provide the seller's CD are they defining "provide" as handing it to the seller rather than preparing it? One would think that the lenders would prefer to transfer the work involved to the settlement agent rather than do it themselves.

If you are challenged with a lender insisting on preparing the seller's CD, here are the pertinent sections in the Rule beginning on page 1740.

"19(f)(4)(i) Provision to seller.
1. Requirement. Section 1026.19(f)(4)(i) provides that, in a closed-end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject to § 1026.33, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction."
"19(f)(4)(ii) Timing Requirement. Section 1026.19(f)(4)(ii) provides that the settlement agent shall provide the disclosures required under § 1026.19(f)(4)(i) no later than the day of consummation."

It's important to make sure we know what the lender is saying in their communication as they may not be saying they want to prepare the seller-only CD in its entirety. Remember, the lender is required to disclose any seller-paid fees that are in connection with the origination of the loan on the consumer's CD; therefore, even in the bifurcated format some seller fees may show on the consumer-only CD. The Rule requires the disclosure of all costs related to the borrowing of the money no matter who pays those costs: the consumer, seller, mortgage broker, lender, etc. As an example, if the appraisal fee is borne by the seller then it must show on the consumer's CD in the seller's column. The vast majority of lenders are not looking to prepare the entire seller-only CD; rather, they need to reflect the fees in accordance with the TRID Rule.

The liability for the accuracy of the numbers on the seller's CD rests with the settlement agent. If the lender insists on preparing the entire document, be certain to obtain this instruction in writing. It would be prudent to establish a review and approval system with the lender so that the final seller's CD is accurate.

Have the conversation with the lender early in the transaction.

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What if the seller doesn't want seller payoffs shown on the Closing Disclosure (CD)?

The solution is to bifurcate the form and issue a buyer-only closing sheet and a seller-only closing sheet. Otherwise, falsifying the combined CD is a serious problem today as well as under the new Rule.

Will lenders have input into the agent's decision to use the bifurcated seller form?

Talk with your lenders and tell them that it is your intention to bifurcate the form and use the form suggested by the CFPB for the seller. The Rule states that the lender must be provided a copy of the seller-only form after closing.

Where does the seller sign?

Since the regulations do not require any signatures on the Closing Disclosure (CD), it will be up to the lender and closing industry to determine if signature lines will be added authorizing the completion of the closing. Consider using the ALTA Settlement Statement to see if its use in addition to the CD will meet your needs. One of the purposes of the ALTA Settlement Statement was to create a disbursement form containing signature lines that not only indicate the party's approval of the numbers but authorize distribution.

Seller's-only closing statements:
As it relates to privacy policies, much of the information on the recommended form is what many would consider to be private/personal information. Is this form to be shared with both buyer and seller?

You are correct; a number of items on Closing Disclosure (CD) would be considered private borrower information and recognizing this, the CFPB created a seller's-only CD. To see the form and other resources, go to ORT's StarsLink, then Education & Marketing, then to CFPB Integrated Mortgage Disclosure Rule. Consider using the ALTA Settlement Statement which includes signature lines and many other solutions to the challenges created by the CD. Remember, the ALTA Settlement Statement is used in addition to the CD not in lieu of the CD.

CFPB response regarding "which seller fees are required to be shown on the borrower's Closing Disclosure (CD)?"

This is a condensed response including Rule citations in the event that you need help communicating with a lender that the Rule does not require all seller's fees to be disclosed on the borrower's CD.

The Quick Answer
All page 2 seller fees must be included on the borrower's CD. The seller fees listed on page 3 do not have to be included on the borrower's CD. It is simple: page 2 yes, page 3 no. This resolves the issue when a seller does not want a release, payoff, or child support lien payments,

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etc. to be disclosed to the borrower.

Resolution on this required a journey through sections of TRID with a slight detour to Reg P. Credit must be given to a staff attorney at the CFPB who went through many sections to reach the regulatory and practical answer.

The Analysis
1) The CD may be bifurcated and presented as two separate documents to the borrower and the seller.
See: 1026.38(t)(5)(v) Separation of consumer and seller information.

2) The fees required to be shown on the borrower's CD as described in paragraph (j) of §1026.38 may be omitted from the seller's CD. The fees required to be shown on the seller's CD as described in paragraph (k) of §1026.38 may be omitted from the borrower's CD.

3) Paragraph (k) includes:
Amounts Due to Seller – Box M, page 3 of the CD
Amounts Due from Seller – Box N, page 3 of the CD
Specifically noted in 2(iv) is the "amount of any and all other obligations required to be paid by the seller at the real estate closing including any lien-related payoffs, fees or obligations."
Calculation: Cash From/To Seller

NPPI Concerns
We expressed our concern for the disclosure of Non-public Personal Information (NPPI) to the borrower in the situation where the lender insists that the settlement agent provide page 3 seller items prior to settlement and in turn the lender discloses the information on the borrower's CD.

Reg P (CFR Part 1016 Privacy of Consumer Financial Information) gives an exemption from the protective requirements of the regulation if we are complying "with Federal, state or local laws, rules and other applicable legal requirements." CFR Part 1016.15(a)(7)(i).

Please remember that the Rule requires the settlement industry to provide the seller's CD to the seller and the lender.

Do mail-away borrower documents create a timing concern?

The TRID Rule places the responsibility of providing the seller's Closing Disclosure (CD) squarely on the shoulders of the closing and settlement industry in Section 1026.19(4)(i)*. It is a responsibility we willingly accept and handle with all of the other functions required to transfer title smoothly and compliantly.

The TRID Rule also states very specifically the timing for when the seller's CD must be provided to the seller – <u>no later than the day of consummation</u>. Section 1026.*19(f)(4)(ii)*

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Therefore, the date of consummation must be known in order to know when the seller's CD must be provided. Consummation is defined within the Rule as the moment in time when the consumer (borrower) becomes contractually obligated to the debt. The definition of "obligation" is determined through state law, but typically the moment of "obligation" occurs when the borrower signs the note.

The challenge comes when a borrower signs documentation outside of the settlement agent's office, a process often used when there is an out-of-state borrower buying a vacation home, for example. The timely delivery of the seller's CD is more complicated in these circumstances unless the exact date the borrower is signing the note is known. In essence, if the signing of the note is the trigger, how do you know when you must give the seller's CD to the seller? You don't unless you ask.

This dilemma prompted another conversation with a staff attorney at the CFPB and though we looked, there is no leeway in the Rule that allows the provision of the seller's CD to the seller at any other time. Therefore, communication with the lender is imperative, especially in areas where borrowers sign their documents prior to the scheduled settlement. Consider putting a system in place which triggers an inquiry of the lender regarding their timeline so that the seller's CD can be provided to the seller within the required time period. It is always a good idea to document the file in instances where there was no knowledge that the borrower signed their documents prior to closing.

**** "Section 026.19 (4)(i) Provision to seller.***
1. Requirement. Section 1026.19(f)(4)(i) provides that, in a closed-end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject to § 1026.33, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction. "

*****Section 1026.19(f)(4)(ii) Timing.***
1. Requirement. Section 1026.19(f)(4)(ii) provides that the settlement agent shall provide the disclosures required under § 1026.19(f)(4)(i) no later than the day of consummation.

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SECTION 9: SIMULTANEOUS ISSUE

How do you explain the problem with the disclosure of the title premium to customers?

Here is the required method to calculate and disclose the title premium.

- Loan Policy Premium: Show full loan policy premium without the simultaneous issue adjustment in Section B or C (whichever is applicable). This is as if the transaction were a refinance without the issuance of an owner's policy.
- Owner's Policy Premium: Shown in Section H and calculated by taking the full owner's premium, plus the simultaneous issue fee, minus the amount shown for loan policy premium.

This works well if the buyer is paying the entire premium, though some state officials may object that the way the premium is required to be calculated on the disclosure is not the way the rates are filed or promulgated. Some state laws may require it disclosed differently, but if the seller is paying any portion and there is a simultaneous issue credit, the mandated formula will **not** work, thus rendering Page 2 of the Closing Disclosure (CD) inaccurate.
The solution – use the ALTA Settlement Statement in addition to the CD where you can accurately disclose the title premiums.

How do we fix the problem with the inaccurate disclosure of the title premiums?

Because the numbers must be adjusted to reflect accurate charges to the buyer and seller the CFPB suggested three ways to fix the problem on the Closing Disclosure (CD).

The first solution may cause additional problems. The CFPB suggested "[t]he remaining credit could be applied to any other title insurance cost, including the lender's title insurance cost (See § 1026.38(f)&(g))." However, changing the lender's title insurance policy cost most likely will affect the APR and if the adjustment is significant enough it may cause a triggering of a new three-day review period, and we don't want that.
The second solution may also cause a problem. "The remaining credit can be considered to be a general seller credit and disclosed as such in the Summaries of Transactions table on page 3 of the Closing Disclosure. (See § 1026.38(k)(2)(vii))" A general seller credit may trigger a Qualified Mortgage (QM) disqualification which will remove the safe harbor protection for the lender. You and the lender will have to determine how the credit should be labeled in light of the QM Rule so as not to create a problem for the lender in the event this alternative is used.

The third suggestion, if carefully worded may be the only workable solution. "Use of a credit specifying the remaining amount for the owner's title insurance cost in the Summaries of Transactions table on page 3 of the Closing Disclosure. (See § 1026.38(k)(2)(viii)). This credit could be disclosed as a "simultaneous issue credit" in the "Summaries of Transactions" section."
Here is an example:
-Owner's Title Policy Premium = $1,900

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-Stand-alone loan policy = $1,500
-Simultaneous Issue = $300
-Seller to pay Owner's Title Policy Premium
-Borrower's Column in Section B/C will show "Title – Loan Policy Premium" $1,500: (or $1,200 too much).
-Seller's Column in Section H will show "Title – Owner's Title Policy (optional)": $700 (or $1,200 too little)
-To correct the inaccuracy on Page 2, show a credit from seller to borrower of $1,200 in Sections L and N on Page 3.

Determining which alternative will require a discussion with your lender. Consider using the ALTA Settlement Statement in addition to the CD where you can accurately disclose the title premiums.

I still do not understand how to correct the premium calculation in my state. Can you give me another way to look at the problem and the solution?

The dilemma that we have when disclosing the title insurance premiums can be daunting especially in simultaneous or reissue credit jurisdictions. If the borrower is paying all premium fees, the CFPB's required formula in accordance with the TILA-RESPA Integrated Disclosure (TRID) Rule regarding how to list on the Closing Disclosure will total properly but that same required formula most likely will not coincide with state rate filings (if any). However, in borrower-pay areas, the math will work and the ALTA Settlement Statement, if used, will reflect the proper rates to illustrate actual numbers for the consumer and for audit purposes.

It is when the seller pays any portion of the premium(s) that the TRID Rule's required method is a challenge. The best way to figure out how to fix the inaccurate way we are required to disclose the premiums is to do this:

1. Write down what the borrower <u>should pay</u> in accordance with the contract and/or custom.
2. Then write down what the seller <u>should pay</u>.
3. Then write down what the Rule requires us to show on borrower's side in Sections B or C.
4. Calculate the differential amount required to be shown on the seller's side in Section H as the Owner's Title Premium.

This will provide a clear picture of who is paying too much and who is paying too little. Here is an example:

1. Buyer should pay a $300 simultaneous issue rate for the loan policy.
2. Seller should pay $1,800 for the owner's policy totaling $2,100.
3. The Rule requires that $1,000 is shown in Section B or C in the borrower's column as the stand-alone loan policy premium labeled "Title – Loan Policy Premium."
4. The differential of $1,100 is placed in the seller's column in Section H and is labeled "Title-Owner's Title Premium."

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In this example, the borrower has been charged $700 too much and the seller has been charged $700 too little. The easiest way to fix is to give a credit to the borrower from the seller on page 3 in Sections N and L as the "Title Insurance Premium Correction" or some wording to that effect.

	Borrower	Seller	Total
Should pay	$ 300	$1,800	$2,100
Rule	$ 1,000	$1,100	$2,100
	$ 700 too high	$ 700 too low	

The wording used for the adjustment to correct the net effect of the premiums is important to the lender so check first before you put the labels in Sections N and L.

Why is Ohio on the list of states with challenges showing the correct title premium fees on the Closing Disclosure (CD)? In my area of Ohio, buyers pay all of the title premium fees.

Ohio and a number of other states have varying customs throughout the state. Northern Ohio is typically a buyer-pay area, Central Ohio is typically a seller-pay area and Southern Ohio is typically a hybrid. Northern Ohio will not have an issue with the form (unless the state objects to the way the fees are broken out on the form) because even though the fees are separated oddly, the total amount will be correct and thus the Cash to Close will be accurate. Central and Southern Ohio may be challenged.
The requirement of the CFPB in the TRID Rule for the calculation and disclosure of the title insurance premiums does not allow agents in many states to:

1) Conform to state laws, and
2) Display correct information to the consumer and seller in a buy-sell transaction.

As directed, disclosure of the title premium must be calculated as follows:

- Loan Policy Premium: Show full loan policy premium without simultaneous issue adjustment in B or C.
- Owner's Policy Premium: Use full owner's premium, add simultaneous issue fee then subtract the amount shown for Loan Policy Premium. Show in Section H.

Doing so creates inaccuracy in states with simultaneous issue credits and where the seller pays any portion of the premiums.

In seller-pay states and/or simultaneous issue states, whether it is by custom, contract or regulation, this method of calculation shows the consumer paying too much and the seller paying too little on Page 2 of the (CD). The easiest solution is to adjust the amounts as a debit/credit on Page 3; however, some lenders have expressed concern with this approach when it comes to meeting the Qualified Mortgage (QM) Rule. Current school of thought is as long as the descriptive phrase associated with the correction does not include "credit," "debit,"

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or “adjustment,” we may be able to fix the form this way, but it is up to each individual lender to decide.
Even in states where the buyer pays all of the title premiums, we are being directed to show the fees in a way that may violate state filings or promulgation, thus causing a problem within a market conduct study or audit.

The industry worked diligently for more than a year to encourage the CFPB to rewrite the section. On April 28, 2015, the American Land Title Association (ALTA) released the uniform ALTA Settlement Statement so that the numbers can be accurately reflected in an easy to understand format. The ALTA Settlement Statement can be used when explaining the numbers to the parties; however, the ALTA Settlement Statement will NOT be used in lieu of the CD. Rather, it will be used in addition to the CD. Please note the bottom line totals of the CD for the borrower and the seller must be exactly the same as the bottom line totals of the ALTA Settlement Statement.

SECTION 10: APR

Although lenders are the experts on what makes up the APR, this section will provide general background.

How much of a change to the APR is allowable without triggering a new three-day review period?

Depending on the type of loan it is either 1/4 or 1/8 of a percent. Some lenders have commented that will err on the side of caution and use the 1/8 of a percent change on all loans no matter what loan product is used in the transaction.

What type of changes would affect the APR?

In principle, the mortgage APR should include all settlement costs that would not arise in an all-cash transaction. Reg Z 226.4 defines many of the costs associated with the APR.

226.4 says, "It includes any charge payable directly or indirectly by the consumer AND imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit."

What we have learned from our many discussions with lenders is that each has their own unique interpretation on both the fees included in the calculation and their tolerance to change; therefore, speaking with your lenders is vital to fully understand the APR issue. Any change made at closing should be approved by the lender.

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Does a new three day review period get triggered if the APR becomes "inaccurate" (up or down) as is stated in the Rule or only if the APR "increases" as is stated a CFPB fact sheet?

Confusion has occurred over whether a new three-day review period is triggered if the APR decreases. We reached out to the CFPB and received a phone call from one of the staff attorneys who actually answered the phone. Of course the response was that the Rule (which states "inaccurate") is actually correct when it references Regulation Z section 1026.22(a)(2). However, we were told to read further into 1026.22 to get to the heart of the issue. The attorney referenced three sections:
"1026.22 Determination of annual percentage rate. Link to an amendment published at 78 FR 80112, Dec. 31, 2013.
(a) Accuracy of annual percentage rate.
(2) As a general rule, the annual percentage rate shall be considered accurate if it is not more than1/8 of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section."
Notice the words "above or below." However, we are then directed to 1026.22(a)(4) which further clarifies the accuracy of the APR if it is in conjunction with a mortgage on real property:
"(4) Mortgage loans. If the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate determined in accordance with paragraph (a)(1) of this section, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, the disclosed annual percentage rate shall also be considered accurate if:
(A) The disclosed finance charge would be considered accurate under§ 1026.18(d)(1); "

And then to determine accuracy for an APR connected with real property 1026.18(d)(1)(i) and (ii) which state:
"(1) Mortgage loans. In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:
(i) Is understated by no more than $100; or (ii) Is greater than the amount required to be disclosed."
Therefore, if the original quote is more than the final APR, it is deemed accurate. However, the CFPB attorney reminded us that if the APR is lower at the time of consummation it is deemed accurate only if the reduced APR is due to a reduction in interest rate or fees. If the math was wrong at the original quote and the creditor corrected it at the time of consummation, the creditor can not avail itself of the protection by simply saying, the APR decreased so I am compliant.

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SECTION 11: DAY OF CONSUMMATION

What about changes or adjustments requested by the real estate agent, buyer and seller for items discovered during the walk-through held the morning of consummation?

If the lender is inputting the numbers on the Closing Disclosure (CD), you will need to stop the transaction, call the lender, ask for the changes to be approved and made to the CD. You will then need to wait for the response and retransmission of the revised CD. Communication with the lender as soon as possible is key and knowing who at the lender will be available during your hour of closing/signing is vital.

If the lender allows you to input the numbers onto the CD then you can make the change at the table but still may need approval to continue from the lender (much like we do now). Critical in all of this is that no charges or adjustments may be made "off the sheet" and though the clients may be pushing you to look the other way, a falsified HUD-1 (now) and/or CD (later) is a criminal act.

Can the seller-side change at closing?

The answer to this question is it depends. It truly depends on why the seller's side is changing. There is no seller's side only change that will retrigger the three-day waiting period UNLESS the change causes the buyer's side to change in the three areas that trigger the new review period. But even if that is the case, certain seller changes may require approval of the buyer's lender. Minor changes such as a water bill payment, (if it is a payment and not an adjustment) should not cause consummation problem, but the logistics of getting the CD revised may take some time. The sooner changes are communicated to the lender the better the likelihood that the transaction will proceed as scheduled. Many real estate professionals are considering conducting two walk-throughs, one seven days prior to consummation and the other one on the day of consummation.

If the lender is completing the Closing Disclosure (CD) on an FHA loan can I change the wording on the FHA certification to reflect that we did not complete the CD?

The Federal Housing Administration (FHA) recently published new FAQs in its Single-Family Handbook. Question 374 addresses allowable changes settlement agents can make to the new settlement agent certification which replaces the current addendum to the HUD-1. FHA released its new certification earlier this summer, stating:
To the best of my knowledge, the Closing Disclosure **which I have prepared***, is a true and accurate account of the funds which were (i) received, or (ii) paid outside closing, and the funds received have been or will be disbursed by the undersigned as part of the settlement of this transaction. I further certify that I have obtained the above certifications which were executed by the borrower(s) and seller(s) as indicated.* (Emphasis added.)

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As most lenders have decided to prepare the Closing Disclosure, the certification creates possible instances in which settlement agents could be falsely signing the certification or delaying transactions for the FHA's low income and first-time homebuyers. In the FHA's FAQ 374, it advises that settlement agents could simply delete or cross out the "which I have prepared" language in instances in which settlement agents did not prepare the Closing Disclosure. FHA's FAQ 374 further states:

A: *FHA does not wish for anyone to make a false certification. Because this is a model component, FHA will accept the tailoring of this phrase to the actual circumstances.* **Thus, if the Settlement Agent does not prepare the closing disclosure, he or she should remove or strike through the statement "which I have prepared" before executing the Settlement Certification.** (Emphasis added.)

This is the FHA's only guidance at this time; it has not revised the certification, nor clarified the instructions on the certification itself. Old Republic Title will continue to keep you updated on any further developments, as this will be part of any training for agents, closers, loan processors, and others involved. Link to FHA FAQ Document:
http://portal.hud.gov/hudportal/documents/huddoc?id=SFH_FAQ_Preview.pdf

Now that the TRID Rule is in effect, can the borrower and the seller still be in the same room at closing?

This question is being asked in the areas of the country where conference-style settlements occur. A conference-style settlement is when the buyers, sellers, title professional, real estate agents, attorney and sometimes the lender arrive at an appointed place, at an appointed time and are together during the settlement or closing to review the documents and figures. It is the time when last-minute negotiations take place and the keys are passed. Often there are children and pets running up and down the hallway.

Not having anything to do with TRID but having everything to do with our charge of protecting the Non-public Personal Information (NPPI) of the parties, the question arises "can everyone be in the same room while information is being reviewed?"
Asking permission and getting authorization to continue the practice of discussing the details of the transaction in a room full of third parties is the prudent approach. Some agents, after receiving an order, have added wording to the confirmation letter to the buyers and sellers asking them if they prefer a private area to discuss the terms of their transaction. Another agent schedules the buyers 30 minutes prior to the seller so that the loan documents can be reviewed in private. Still other agents are adding authorization language to the affidavits and are getting the affidavits signed first, before anything else. Language we have seen looks something like this:

Before proceeding with my settlement I hereby authorize the settlement agent to review my loan documents and any other document containing non-public personal information as follows:

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_____ *In the presence of parties related to my transaction; including but not limited to real estate brokers and agents, seller(s), seller(s) attorney or personal representative(s), loan officers, title agent personnel, my personal representative(s),*
or
_____ *In a private area*

This is not suggested language but is being supplied as an example of one agent's attempt to protect herself from a challenge in the future. The same agent that shared the above language also adds a statement to her buyer's and seller's affidavits authorizing the agent to provide copies of the ALTA Settlement Statement (in a bifurcated format) to the real estate agents in the transaction. Again this language is being provided as a sample; you need to consult counsel, make your own risk decisions and create your own wording if you so choose.

Further I/we hereby authorize the Company to distribute a copy of my/our ALTA Settlement Statement to the real estate professionals involved in my transaction, my attorney, and/or accountant (if applicable).

If the borrower/buyer declines purchasing an Owner's Title Insurance Policy, is there a way I can protect my company from the buyer later denying they were offered such coverage?

This is a very important question. In areas of the country where the buyer pays any portion of the Owner's Title Insurance premium, there is a requirement in the Rule to use the modifier "optional" on the Closing Disclosure when the premium is listed in Section H. Remember, cash and commercial transactions do not fall under the provisions of the Rule; therefore, no modifier is required. Be prepared to discuss the benefits of an Owner's Title Insurance Policy, which is the only protection consumers could receive for their interest in the property, as the Lender's Title Insurance Policy is protection for the lender only.

Waiver of Owner's Title Insurance By Borrower(s)

Some states currently have a statutory requirement that buyers must sign a waiver if they decline coverage; however, even if the state does not require it, you may want to consider having the consumer sign a hold harmless letter for you and your company/firm. *Note: if your state has required waiver language, please check with state counsel to make sure your state doesn't have a statutorily mandated waiver. If your state requires specific waiver language or a different waiver form, please disregard this new form.*

Old Republic Title created a waiver template which can be printed or used in fillable PDF (with customizable fields - Date, Property Address, File Number, Premium Amount, and Agent Company Name). Please note that only the editable areas of the waiver can be modified. The "Waiver – Owner's Title Insurance Policy" can be found in the following places on StarsLink:

1) Agent Services → Underwriting Practices Resource in ORT Bulletins or ORT/ALTA Forms & Endorsements sections; and

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2) OR Title Guide → Bulletins or Forms sections.

Education About Owner's Title Insurance

While the waiver is important, there are things that we must do in addition to the waiver, the most important of which is education about Owner's Title Insurance. "The Importance of an Owner's Title Insurance Policy" and "The Value of Title Insurance" sell sheets are invaluable resources to educate about Owner's Title Insurance and the need for dialogue with real estate agents, lenders and consumers early in the process and you may want to provide these to the consumer either prior to or at consummation. These sell sheets can be found on oldrepublictitle.com in the CFPB section and customizable versions (agency/company name/contact information) are located on StarsLink under Education & Marketing, then CFPB's TILA RESPA Integrated Disclosure (TRID) Rule sub-page in the section entitled "ORT TRID Rule Education."

The goal is for consumers to see the value in protecting their investment and in purchasing an Owner's Title Insurance Policy; however, if they elect not to do so, the waiver serves as a final touch point to memorialize that this was indeed a consumer choice to elect NOT to purchase an Owner's Title Insurance Policy.

SECTION 12: POST-CLOSING

Do changes made after closing on a refinance trigger a new three-day review period?

There are very specific requirements if changes are made after consummation as to notification and Closing Disclosure (CD) corrections but the retriggering of the review period only occurs if one of the three instances occurs. Please see the section on the three-day review period.

What are the procedures when something changes after closing?

If a fee to the consumer becomes inaccurate within 30 days of consummation and that inaccuracy results in a change to the amount actually paid by the consumer, the Creditor must deliver or place in the mail a revised CD within 30 days of knowledge of the inaccuracy.
If a clerical non-numeric error is discovered, the Creditor must deliver or place in the mail a revised CD within 60 days after consummation.

If a tolerance level is violated, the Creditor must refund the required amount to the consumer within 60 days of consummation and the Creditor must provide a revised CD reflecting the refund within the same 60 day time period.

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Fee change: If a fee charged to the consumer becomes inaccurate within 30 days of closing and that inaccuracy results in a change to the amount actually paid by the consumer, the creditor must deliver or place in the mail a corrected Closing Disclosure (CD) within 30 days of knowledge of the inaccuracy.
Section 1026.19(f)(2)(iii).

Clerical change: If a clerical, non-numeric error is discovered the creditor must deliver or place in the mail a corrected CD within 60 days of consummation. Section 1026.19(f)(2)(iv).

Tolerance level violation: If a tolerance level is violated, the creditor must refund the required amount to the consumer within 60 days of consummation and provide a corrected CD reflecting the refund within the same 60 day period. Section 1026.19(f)(2)(v).

If there are escrow funds on the Closing Disclosure (CD) and we disburse them after closing, does a corrected CD need to be prepared and delivered?

The following excerpt from the Rule is very clear with the answer to the question in the last sentence.

"3. Escrows held by closing agent for payment of invoices received after consummation.
Funds to be held by the closing agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at closing because the amounts used by the seller prior to closing are not yet known must be disclosed under § 1026.38(k)(2)(viii). Subsequent disclosure of the actual amount of these post-closing items to be paid from closing funds is optional. "[emphasis added] Section 1026.38(k)(2)viii-3.

We are directed in the CFPB's "TRID Guide to the Loan Estimate and Closing Disclosure Forms" that the disclosure of any escrow funds should be made in Section N on page 3 of the CD.

If we disburse an escrow after closing, does the Closing Disclosure need to be revised?

Section 1026.38(k)(2)viii-3 gives us the "option" of revising and providing the seller's Closing Disclosure (CD) if we disburse an escrow post-closing but ONLY if the escrow was for "the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at closing because the amounts used by the seller prior to closing are not yet known."

In the settlement and closing world, escrows are necessary for a variety of reasons, particularly at the time when new real estate taxes are due but the bills have not yet been issued. It may seem natural to assume that the CFPB meant to include escrowed taxes in 38(k)(2)viii-3 but they did not.

Therefore, it leads us to believe that a revised CD must be prepared if an escrow is disbursed (or enough knowledge to disburse is discovered) within 30 days of consummation IF the release

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of funds results "in a change to an amount actually paid by the seller from the amount disclosed under § 1026.19(f)(4)(i)."

The settlement agent must deliver or place in the mail the corrected CD to the seller no later than 30 days from the time the information to disburse the escrow is known if that knowledge is discovered by the settlement agent within 30 days of consummation. In addition, the closing agent must deliver a copy of the revised CD to the lender in accordance with § 1026.19(f)(4)(iv).

The Rule gives a number of examples but let's use a tax escrow scenario as our example:

Consummation is scheduled for January 2 and though the new tax year has begun, the municipality has yet to determine the tax millage amount to calculate the taxes for the upcoming year. We would typically escrow an amount slightly more than our best estimate of the tax bill. If we have escrowed from the seller's funds (placing the escrowed amount in Section N) and then gain knowledge of the tax millage amount prior to February 1 (30 days), in order to calculate and pay the taxes, we will have 30 days from this knowledge to provide a revised seller CD to the seller and lender.

The same philosophy applies if the escrowed amount was placed on the borrower's side but the lender will be responsible to provide the revised CD to the borrower.

Does this apply if the bottom line for the seller (or borrower) does not change? The Rule states that the revised CD is required if the disbursement of the funds results in a change to AN amount actually paid. In our scenario, our settlement agent escrowed $750 but when the tax amount was calculated, the amount due was $725. It would seem that paying $725 from the escrow for taxes indeed "results in a change to an amount actually paid from the amount disclosed" on the original CD.

SECTION 13: INDUSTRY ISSUES

How will funding work under the new Rule?

Most lenders have said they are still comfortable with the closing industry handling the funding and disbursement of funds. If the lender inputs the numbers onto the Closing Disclosure (CD), the title/closing offices will have to also input all of the numbers into their system so that they can balance and disburse.

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Who will prepare the disclosure forms?

There are two new disclosure forms under the new Rule. The first is the Loan Estimate (LE) which replaces the GFE and the early Truth in Lending (TIL). The lenders or their designee (possibly the mortgage broker) will prepare and deliver the LE. The second disclosure form is the Closing Disclosure (CD), which replaces the HUD-1 and Final TIL. The Rule gives the lender the option of preparing the CD internally or working with a third party provider. Each lender will make their own decision as to whether or not they want to input the numbers internally or allow a third party provider to input or some hybrid of the two. Now is the time to communicate with your lenders to find out what role you can play. As you know, several large lenders have decided they will input the numbers onto the CD but have recognized the need to obtain many of the fees, calculations and adjustments from the title closing and escrow companies.

Will software providers leave the current HUD-1 on my system for use in cash and commercial transactions?

Please check with your software provider to make certain you will still have the use of the current HUD-1 as you will need something other than the Closing Disclosure (CD) for the exempt transactions.

The exempt transactions are:
HELOC, reverse mortgages, loans made by creditors making five or fewer loans per year (but they still have to deal with the Loan Officer Compensation Act), cash, commercial purpose loans, mobile home loans and no-interest second mortgage made for down payment assistance, and energy efficiency or foreclosure avoidance are all exempt.

Disbursements:
If the agents are not preparing the Closing Disclosure (CD) is the agent still doing all the disbursing?

We are led to believe that we will still be doing the disbursing in the proposed Rule but the recent CFPB consent orders and April 13, 2012 bulletin may cause lenders to consider taking the entire process in-house since they are responsible for the acts of third party providers. We have to make sure that our lenders understand that we are serious about following the rules and protecting the rights of the consumers, so that we continue performing this role. To-date, we are not aware of any lenders who have decided to take on this role. Please make certain your Best Practice procedures are in place and are well documented.

Do you think there will still be a role for a sole practitioner attorney/title agent under the new rules?

All small practitioners and agents should make their local lenders aware that they are ORT agents, that they understand the federal rules, that they have safeguards in place to protect the consumer's information and that they are in the best position to serve the consumer well.

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One of the largest lenders in this country has told ORT that their number one priority is a positive customer experience. Hopefully they recognize that the expertise and the convenience of the local provider help assure a positive experience for their borrowers.

Additional TRID Questions? Email us at trid@oldrepublictitle.com

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