First American Title™

CFPB-TRID
Frequently Asked Questions
December 1, 2015

Contents

TILA-RESPA Integrated Disclosure Rule

Construction Loans

Q: What forms are used for construction loans?

A: The integrated disclosure provisions apply to construction-only loans, vacant-land loans, and loans secured by 25 acres or more if primarily for personal, family, or household purposes. 12 CFR § 1026.2(a)(12).

Consummation

Q: Will Settlement Agents require the lender to provide the earliest date of consummation?

A: A best practice would be to obtain the earliest consummation date from the Lender in writing. This would be very helpful when scheduling the Borrower signing.

Q: If consummation is not on the same date as recording/disbursement, how are prorations handled when the recording occurs later than originally planned (and as is shown on the Closing Disclosure)?

A: There are a couple of possibilities for this event: If the contract calls for the recording date to be the proration date, and buyer owes more money because of a later recording, then a corrected Closing Disclosure needs to be prepared and sent to the borrower within 30 days. If the borrower does not owe any additional money, then no corrected Closing Disclosure is needed.

However, contracts may be revised in light of the new rule calling for prorations to remain as they are in the Closing Disclosure provided that they don't exceed a certain amount or provided they be done as of a date certain regardless of recording. As a result, there may be changes in procedures due to the rule.

Q: If consummation date is determined as the date of signing and the Closing Disclosure prepared, can the borrower sign later than the closing date shown on the Closing Disclosure?

A: Yes, but a corrected Closing Disclosure still needs to be prepared as of the consummation date if any charges change (for instance per diem interest might change).

Q: What should a settlement agent do if a lender defines consummation as something other than the date the note is signed?

A: Since the lender is liable for any inaccuracy in the Closing Disclosure (including the dates), we do not anticipate that lenders will be relaxed in their interpretations of the rule. However, because the lender is the only one responsible for compliance with the rule, the settlement agent can document

the file and proceed without being held responsible. Caution, if the lender's instructions attempt to shift liability to the settlement agent the settlement agent should seek guidance from management or an underwriter.

Q: Can loan documents be signed on Sunday?
A: The validity of a Sunday consummation does not change because of this rule. However, since Sunday is not a business day, the Closing Disclosure would have to be received 3 days prior to the preceding Saturday.

Q: Are there any lenders that will not interpret the 'date of consummation' as, effectively, the date of signing of the loan documents?
A: We're not aware of any at this time. Consummation is the date the consumer becomes obligated under the loan. Earliest date is the signing of the note. However, in some states it could be later (i.e. the recording date). Most likely consummation will be determined by lender. Since the lender is liable for any inaccuracy in the Closing Disclosure (including the dates), we do not anticipate that lenders will be relaxed in their interpretations of the rule. Caution, if the lender's instructions attempt to shift liability to the settlement agent, the settlement agent should seek guidance from management or an underwriter.

Q: Can date of consummation be after date of closing? If so, when should the Closing Disclosure be delivered?
A: The date for delivery of the Closing Disclosure is based solely on the consummation date, so if that date (probably the date of signing the note) is after the date of delivery of the deed and handling of escrow issues, then it would not have to be delivered at that time. However, since it can be delivered earlier than the three days before consummation, the lender may opt to deliver it earlier than required.

Effective Date(s)

Q: What is the effective date for the new forms?
A: The TILA-RESPA Integrated Disclosures Final Rule applies to covered loans for which the lender or mortgage broker receives a loan application on or after October 3, 2015. Loans for which an application was received before October 3, 2015, will still be closed using the HUD-1 form. There will be a period of several months where both forms will be used. Also, the HUD-1 form will still be used for reverse mortgages until the CFPB issues a rule dealing with reverse mortgages.

Forms

Q: Are there different forms for the Borrower, Seller or a Refinance transaction?
A: There is a 5 page Closing Disclosure for purchase transactions that includes the Borrower's and Seller's costs. There is a 2 page form for the Seller that includes

only Seller costs and excludes the loan information and disclosures. For transactions without a Seller, there is a 3 page Closing Disclosure form that eliminates Seller specific items.

Q: Where is the Title Agent or the Title Insurance Company information disclosed on the Loan Estimate or Closing Disclosure?

A: Neither is listed on the new forms. The Settlement Agent handling escrow is listed. Note there is no requirement for the Agent premium split to be identified on the forms.

Q: If there is both a conventional first mortgage and a second lien HELOC, what will the forms look like?

A: The first mortgage information will be on a Closing Disclosure and the Home Equity Lines of Credit will be on the lender's forms for HELOCs. Home Equity Lines of Credit have always been exempt under Regulation X of RESPA and a HUD-1 does not need to be used for disclosure. A separate section of Reg Z describes the disclosures required by Truth in Lending for HELOCs and that has not changed.

Hard Money Loans

Q: Are hard money loans included in the new rule?

A: If the hard money loan is made to a consumer primarily for personal, family, or household purposes, then it would be subject to the new rule.

Impacted People, Property & Transaction Types

Q: What property types are impacted (Single Family Residence, Multi Family Residence, Condominium, Commercial, Mobile Home, PUD, etc.)?

A: The type of property is not a determining factor as to the applicability of the new rule in a transaction. The Loan Estimate and the Closing Disclosure are provided in connection with "a closed-end consumer credit transaction secured by real property, other than a reverse mortgage . . ."
(12 CFR § 1026.19(e)(1)(i) and (f)(1)(i)). 12 CFR § 1026.2(a)(12) provides:
(12) Consumer credit means credit offered or extended to a consumer primarily for personal, family, or household purposes.

This classification of "personal, family or household purposes" has been around since Truth in Lending came into being. In Regulation Z (12 CFR § 1026.3) and its Official Staff Interpretation, it is explained as the opposite of credit extended for business, agricultural, commercial or organizational purposes. The primary example of consumer purpose credit is a loan used to purchase a primary residence, but the new Rule will apply to a loan secured by a commercial property if the purpose is to pay for a child's education. A loan secured by rental residential real estate occupied in part by the borrower has special rules and lenders will be careful to apply them

when deciding if the Rule applies or not.

Q: What transaction types are impacted (Cash, HELOCs and Reverse Mortgages)?

A: The TILA-RESPA Integrated Disclosure rule does not apply to a cash purchase. Reverse Mortgages are still governed by the 2008 RESPA Final Rule and will be subject to use of the GFE and HUD-1. There is no set form for HELOCs. For reverse mortgages, it will be the current HUD-1 as we see it today.

Q: Is it correct that this new CFPB Rule will NOT apply to: owner finance loans (provided the seller has not done more than five loans in . . . how long?), Contract for Deed, and private loans from family members?

A: This rule is issued under the Truth in Lending Act and the owner or family member who is making loans may be covered by portions of Regulation Z even if this specific rule does not apply. Private or hard money lenders will need to see if they are covered by the Truth in Lending Act, and if they are required to be licensed as well as if they need to follow this rule. That determination can be very fact specific, as well as impacted by state law. It would be advisable for any unlicensed/unregistered lender (who lends money to individuals for personal, family or household use) to obtain a business specific, legal opinion on the matter. The best short resource on the role of private lenders as well as a guide to the rule is at the CFPB's website (www.consumerfinance.gov) and the Small Entity Guidance that is posted there- both for the Integrated Loan Disclosures rule and the Loan Originator Compensation and Qualification rule.

Q: If the borrower is a Corporation, Partnership or other non-natural person entity (LLC, LLP), is a Closing Disclosure required?

A: No Closing Disclosure is required for a transaction involving a Corporation, Partnership or other non-natural person entity. These entities are exempt under 12 CFR § 1026.3(a)(2).

Q: If a buyer is a Trust and the borrower is the trustor/trustee, is a Closing Disclosure required?

A: If the borrower is the trustee of a trust, the lender must decide if the loan purpose is business or personal because 12 CFR § 1026.3(a)(1) exempts loans primarily for business, commercial or agricultural purposes. If the loan proceeds will be used for personal, family or household use, then yes, the Closing Disclosure is required (along with adherence to all the rest of the Rule).

Q: Are investor loans subject to the new rules?

A: Consumer credit loans are subject to the new rule. Consumer credit means credit offered or extended to a consumer primarily for personal, family, or household purposes.

Q: Is there anything that specifically refers to 25+ acres and vacant land loans in the new rule? Most vacant land loans are Commercial transactions so they would be exempt.

A: 25+ acres loans were exempt from RESPA under the Regulation X and were only covered by TILA if the loan purpose was for personal, family or household use. Under the new rule, effective October 3, 2015, the RESPA exemption has been removed pursuant to Regulation X (12 CFR section 1024.5 (a)) and now the two regulations are consistent. If the loan proceeds are for personal, family or household use, the transaction is covered by the new Rule regardless of the size of the acreage.

Vacant land is covered by the new Rule if the loan proceeds are for personal, family or household use, such as financing secured by vacant land where the proceeds are used for children's education.

For a detailed explanation of the CFPB's reasoning on this issue, please see pages 102 to 105 of the final rule.

Mobile Homes

Q: Are the new forms used for Mobile Homes?

A: Mobile Homes affixed to real property are included in the new rule. Rule Reference: The new rule applies to "a closed-end consumer credit transaction secured by real property, other than a reverse mortgage . . ." (12 CFR § 1026.19(e)(1)(i) and (f)(1)(i)).

Private Party Loans

Q: Are private party lenders required to use the new forms?

A: The new rule does not apply to loans made by a creditor who makes five or fewer mortgages in a year.

Refinance

Q: Is a borrower contractually liable in a refinance before the 3 day rescission period expires?

A: Yes, under current law and regulation, the date of consummation is the date that the 3 day rescission period begins. The new Rule does not change this.

Rental Property

Q: What forms are used for rental property?

A: Because a loan for rental property is not "extended to a consumer primarily for personal, family, or household purposes," the new forms would not be required. Rule Reference: The Loan Estimate and the Closing Disclosure are provided in connection with "a closed-end consumer credit transaction secured by real property, other than a reverse mortgage . . ." (12 CFR § 1026.19(e)(1)(i) and (f)(1)(i)). 12 CFR § 1026.2(a)(12) provides: (12) Consumer credit means credit

offered or extended to a consumer primarily for personal, family, or household purposes.

Penalties

Q: Why are title & escrow companies subject to the same penalties as lenders when we are not licensed under the Department of Finance? Is it true that title & escrow companies will only be subject to the same penalties as the lenders, if they prepare and deliver the CD? If preparing and delivering the CD is not the indicator, than what is and what other 3rd party vendors are subject to the same penalties?

A: The CFPB has the authority to regulate any "covered person," which is defined by 12 USC § 5481(6) to include "any person that engages in offering or providing a consumer financial product or service." 12 U.S.C. § 5481(5) defines a consumer financial product or service as any "financial product or service offered or provided for use by consumers primarily for personal, family, or household purposes, or delivered, offered, or provided in connection with such a consumer financial product or service." Financial products and services include, according to 12 USC § 5481(15)(A)(iii), the providing of real estate settlement services. Additionally, 12 U.S.C. § 5515 (d) provides that "[a] service provider to a person described in subsection (a) [basically, insured depository institutions or credit unions with assets of 10 billion or more] shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 1867(c) of this title."

Section 1055(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 5565(c)) provides:

(c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—Any person that violates, through any act or omission, any provision of Federal consumer financial law shall forfeit and pay a civil penalty pursuant to this subsection.

(2) PENALTY AMOUNTS.—

(A) FIRST TIER.—For any violation of a law, rule, or final order or condition imposed in writing by the Bureau, a civil penalty may not exceed $5,000 for each day during which such violation or failure to pay continues.

(B) SECOND TIER.—Notwithstanding paragraph (A), for any person that recklessly engages in a violation of a Federal consumer financial law, a civil penalty may not exceed $25,000 for each day during which such violation continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates a Federal consumer financial law, a civil penalty may not exceed $1,000,000 for each day during which such violation continues.

Loan Estimate

3 Day Disclosure/Delivery Requirements

Q: When does a lender have to provide a Loan Estimate?

A: Once a creditor receives a Loan Application from a consumer, it must provide a Loan Estimate within 3 business days. See § 1026.19(e)(1)(iii). A Loan Application is considered received when the creditor obtains six pieces of information: the consumer's name, monthly income, social security number to obtain a credit report, the property address, estimate of property value, and loan amount sought. See 12 CFR § 1026.2(a)(3).

Q: Could the Loan Estimate 3 days run concurrent with Closing Disclosure 3 day on re-disclosures?

A: No, the lender may not provide a revised version of the Loan Estimate on or after the date on which the Closing Disclosure has been provided. (*See:* 12 CFR § 1026.19(e)(4)(ii).) If the Closing Disclosure hasn't been issued yet, the lender could issue a revised Loan Estimate if there were "changed circumstances." The consumer must receive a revised version of the Loan Estimate not later than four business days prior to consummation. (*See:* 12 CFR § 1026.19(e)(4)(ii).) If it is mailed, then the consumer is considered to have received such version three business days after the lender delivers or places such version in the mail. (*See:* 12 CFR § 1026.19(e)(4)(ii).) The Closing disclosure must be received no later than three business days before consummation.

Q: What if the Loan Estimate is emailed?

A: If the Loan Estimate is not provided to the consumer in person, for example, if it's mailed or emailed, then the consumer is considered to have received it 3 business days after it is delivered or placed in the mail. When counting the 3 business days, the day the Loan Estimate is mailed or e-mailed is not counted. The lender may rely on evidence that the consumer received the emailed disclosures earlier. The TRID Rule does not specify what type of evidence would be acceptable.
See 12 CFR §1026.19(e)(1)(iv) and Comments 19(e)(1)(iv)-1 and -2.

Q: Does a business day for a Loan Estimate include Saturdays?

A: A business day for delivery of the Loan Estimate, as defined in the Rule, means a day on which the lender's offices are open to the public for carrying on substantially all of its business functions. It would include Saturdays, therefore, if the creditor is open for substantially all business functions. For example, if the creditor is able to receive and process a loan application on a Saturday, it would count as a business day for that particular creditor. See 12 CFR § 1026.2(a)(6). See § 1026.19(e)(1)(iii)(A) and § 1026.19(e)(1)(iii)(B) for Loan Estimate delivery timing requirements.

Expiration Date

Q: Does the Loan Estimate have an expiration date?
A: Yes, it expires 10 business days after it is mailed or delivered in hand.

Q: Does a lender have to issue a new Loan Estimate after the first one has expired?
A: No, the lender may, but does not have to issue a new Loan Estimate. If the lender wishes to ratify that the terms of the expired one will be honored, it can prepare the CD off of the amounts and terms of the original LE. A lender may wish to do that if timing issues related to a new Loan Estimate would push the date for consummation out beyond the preferred date.

(*See:* 12 CFR § 1026.19(f)(1)(ii).) Thus if a new Loan Estimate was personally delivered four business days prior to consummation and on the next day, three business days prior to consummation, a Closing Disclosure was personally delivered, then the transaction could be consummated after the running of four days.

Issuance

Q: Can a Lender issue multiple Loan Estimates on different loan products concurrently to the same consumer?
A: Yes, in fact that is what the CFPB is hoping will happen.

Q: Can a creditor issue a revised Loan Estimate prior to consummation?
A: A creditor may issue a revised Loan Estimate due to any of six different types of changes:

- First, changed circumstances affecting settlement charges which cause a zero or 10% tolerance to be exceeded would trigger the need for a revised Loan Estimate. An example is if a survey is required.
- Second, lenders may also issue a revised Loan Estimate in the case of changed circumstances affecting the loan eligibility, such as employment or income.
- Third, revisions requested by consumer, for example if the consumer opts to use a Power of Attorney (POA), which requires the addition of a recording fee.
- Fourth, if there are interest rate dependent changes, such as a loan rate lock.
- Fifth, the Loan Estimate expires 10 business days after it is issued (if the consumer hasn't indicated an intent to proceed) and may be revised after it expires, and
- Sixth, it may be revised due to a delayed settlement date on a construction loan.

See 12 CFR § 1026.19(e)(3)(iv).

It's important to note that the revised Loan Estimate must be delivered to the consumer, or placed in the mail, no later than 4 business days prior to consummation, and a revised Loan Estimate may not be issued after the initial Closing Disclosure is issued.

Q: What happens if a new fee goes into effect after the Loan Estimate is generated?

A: That scenario is no different than would be the case today. It is a changed circumstance and a new Loan Estimate may be issued (if no Closing Disclosure has been issued) if the fee is one that is subject to tolerances.

Sections on the Loan Estimate (LE)

Q: If borrowers have their own attorneys (representing their interests, not the lenders') where would the attorneys' fees go on the Loan Estimate?

A: Attorneys' fees would go in Section H - Other, since it is an amount known to the creditor, but not required by the creditor as part of the loan transaction.

Q: Where do the costs of endorsements go on the Loan Estimate?

A: Loan policy endorsements would go with the other loan title insurance policy related items in either section B or C of the Loan Estimate, depending on whether the lender will be allowing the borrower to shop for the provider of the loan title insurance policy. They would be separately itemized and noted as "Title - Type of Endorsement."

Q: In a refinance or home equity transaction without a seller, what amount is used for the property value on the Loan Estimate?

A: The lender may use the estimated value provided by the consumer or, if an appraisal has been done, the amount from the appraisal or the amount that the lender will use to underwrite the loan application.

Q: When would the amount in the Loan Estimate section called "Estimated Taxes, Insurance and Assessments" be different than the amount listed in Projected Payments "Estimated Escrow"?

A: The amount in "Estimated Escrow" represents only the property expenses that the lender is planning to escrow. The amount below that in "Estimated Taxes, Insurance and Assessments" represents all of the expenses that the lender has identified as property expenses, regardless of whether that cost will be subject to an escrow. For example, the lender may know that there is a homeowner's association expense but not establish an escrow account to pay that cost. In that case, the amounts for taxes and insurance would be in the 'Estimated Escrow' amount, but a larger amount (taxes, insurance and homeowner's association dues) would be in the section called "Estimated Taxes, Insurance and Assessments".

Q: On the Loan Estimate, what is the property address? Can it be an Assessor's Parcel Number?

A: The Rule states that the Loan Estimate must contain the address of the property including a zip code, or if no address is available, the 'location' of the property (which can be a lot number) with a zip code may be used.

Q: Is the aggregate adjustment amount allowed to be shown on the Loan Estimate? What if impounds are required? Does providing the amount on the Loan Estimate impact the good faith variances?

A: The aggregate escrow account adjustment is not allowed to be shown on the Loan Estimate. The answer is the same even if impounds are required. Because it is not allowed to be shown on the LE, there would be no impact on the good faith variances. Additionally, under § 1026.19(e)(3)(iii)(C), amounts placed into an escrow, impound, reserve, or similar account are subject to an unlimited variance.

See Comment 37(g)(3)-2. *Aggregate escrow account calculation*. The aggregate escrow account adjustment required under § 1026.38(g)(3) and 12 CFR 1024.17(d)(2) is not included on the Loan Estimate under § 1026.37(g)(3).

Q: A Loan Estimate showed a $6,000 credit to the borrower on a refinance transaction, but the loan instructions directed the settlement agent to disburse $4,000 of it as compensation to the mortgage broker, so the file was short to close once the true amount of broker charges was discovered. Don't mortgage broker fees have to be on the LE in addition to the CD?

A: The broker's fees will NOT show on a Loan Estimate, so if you are working on a loan with a mortgage broker and are only provided a Loan Estimate, be sure to ask what the broker fees are. The fee doesn't show on the LE, only the CD. Be sure to show the full credit to the borrower on the CD as appropriate to balance the additional cost to the buyer of the loan originator getting a fee.

> Comment to Section 1026.37(f)(1)-2: *Indirect loan originator compensation*. Only charges paid directly by the consumer to compensate a loan originator are included in the amounts listed under § 1026.37(f)(1). Compensation of a loan originator paid indirectly by the creditor through the interest rate is not itemized on the Loan Estimate required by § 1026.19(e). However, pursuant to § 1026.38(f)(1), such compensation is itemized on the Closing Disclosure required by § 1026.19(f).

Title Insurance Premiums (LE)

Q: How will owner's and lender's title insurance be disclosed on the Loan Estimate in states where the borrower is granted a simultaneous issue discount?

A: In states that have a simultaneous issue rate, the loan policy premium will be calculated as if no owner's policy is being issued. The owner's policy premium

will be calculated by taking the full owner's policy premium, subtracting the full loan policy premium and adding the simultaneous issue rate.

Q: What does a Settlement Agent do if the Lender does not reflect the full loan premium, in a simultaneous issue state, on the LE?

A: A best practice would be to provide the lender information regarding the CFPB TRID calculation. Here is a 3 minute informational video. Title Premium Quoting – Simultaneous Issue

Variations

Q: When the Lender gives the borrower the Loan Estimate, any items in "Section B Cannot Shop For" will ALWAYS be in the 0% category. The thinking behind this is that if the borrower can't shop for it, the Lender is responsible to quote the "maximum" price?

A: Yes. When the lender gives the borrower the Loan Estimate, any items in "Section B Cannot Shop For" will ALWAYS be in the 0% category because they fail to meet 12 CFR § 1026.19(e)(3)(ii)(C).

Q: What happens if a figure is quoted for the Loan Estimate that ends up being lower on the Closing Disclosure, for example, for recording fees. Does the lender have to redisclose?

A: If the change is in an amount after the initial Closing Disclosure has been issued, there will have to be a redisclosure for any change, using a corrected CD.

> According to the Preamble on page 533, if changes **for any other reason** occur after the initial Closing Disclosure is provided, the creditor must provide a corrected Closing Disclosure reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation, pursuant to § 1026.19(f)(2)(i). [Emphasis added] § 1026.19(f)(2)(i) Except as provided in paragraph (f)(2)(ii), if the disclosures provided under paragraph (f)(1)(i) of this section **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. [Emphasis added]

If the change is in an amount before the initial Closing Disclosure has been issued, then there may be no tolerance violation, but the lender should interpret the rule about reissuing the Loan Estimate.

> According to § 1026.19(e)(3)(i), "an estimated closing cost disclosed pursuant to paragraph (e) of this section is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed." Section (ii)(A) states: An estimate of a charge for a third party

service or a recording fee is in good faith if: (A) The aggregate amount of charges for third-party services and recording fees paid by or imposed on the consumer does not exceed the aggregate amount of such charges disclosed under paragraph (e)(1)(i) of this section by more than 10 percent."

Closing Disclosure

Agent/Underwriter Split

Q: Where do we show the agent/underwriter split of premium on the new disclosures?

A: The agent/underwriter split is not required to be on the Closing Disclosure form.

Contact Information

Contact Information Table on CD > Settlement Agent Column		
Licensee	**ST License ID**	**Contact ST License ID**
Company and Individual	Insert Company's License ID number	Insert Individual License ID number
Company only	Insert Company's License ID number	Leave blank*
Individual only (company acting as settlement agent but no license required)	Leave blank*	Insert Individual License ID number
Individual only (no company acting as settlement agent)	Insert Individual License ID number	Insert Individual License ID number
No license required for either company or individual acting as settlement agent	Leave blank*	Leave blank*

*For more specific details, see final Q/A in this section below.

Q: Where do the settlement agent company and individual license ID numbers go in the Contact Information table on page 5 of the CD?

A: See below:

- The company license ID number would appear in the "ST License ID" field (4th row of the Contact Information table). If the company acting as settlement agent does not have a license ID number, leave that field blank.
- The individual license ID number would go in the "Contact ST License ID" field (7th row of the Contact Information table). If the individual acting as settlement agent does not have a license ID number, leave that field blank.

See Comment 38(r)(5): *License number or unique identifier*. Section 1026.38(r)(3) and (5) requires 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);

- If there is no company involved, for example, when the settlement agent is an attorney agent, not the attorney's law firm, the individual's license number would appear in both the "ST License ID" and the "Contact ST License ID" fields.

See the first sentence under Comment 38(r)(5) and the last sentence under Comment 38(r)(2).

Q: Who should be shown in the "Contact" field (5th row of the Contact Information Table?

A: The name of the consumer's "primary" contact goes in the Contact field.

See Comment 38(r)(6). *Contact*. Section 1026.38(r)(4) requires the disclosure of the primary contact for the consumer. The primary contact is the natural person employed by the person disclosed under § 1026.38(r)(1) who interacts most frequently with the consumer and who has an NMLSR ID or, if none, a license number or other unique identifier to be disclosed under § 1026.38(r)(5), as applicable. For example, if the senior loan officer employed by the creditor or mortgage broker disclosed under § 1026.38(r)(1) has an NMLSR ID, but the consumer meets with a different loan officer to complete the application and answer questions, the senior loan officer's name is disclosed under § 1026.38(r)(4) unless the other loan officer also has an NMLSR ID, in which case the other loan officer's name is disclosed. Further, if the sales agent employed by the consumer's real estate broker disclosed under § 1026.38(r)(1) has a State-issued brokers' license number, but the consumer meets with an associate sales agent to tour the property being purchased and complete the sales contract, the sales agent's name is disclosed under § 1026.38(r)(4) unless the associate sales agent also has a State-issued license number, in which case the associate sales agent's name is disclosed. Moreover, 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.

Q: On page 5 of the Closing Disclosure where the license ID number is to be shown for the real estate broker, would the license ID number be shown for the real estate branch or the real estate headquarter location?

A: The information starts on page 1868 of the rule. It appears that the license number for the office with which the consumer is dealing would be used instead of a general headquarter address. If the individual contact for that office also has a license ID number, that number is added in the "Contact ST License ID" field below the individual's name.

See Comment 38(r)-3: *Address*. The address disclosed under § 1026.38(r)(2) is the identified person's place of business where the primary contact for the transaction is located (usually the local office), rather than a general corporate headquarters address. If a natural person's name is to be disclosed under § 1026.38(r)(1), see comment 38(r)-2, the business address of such natural person is listed (assuming that such natural person is the primary contact for the consumer or seller, as applicable).

Q: If the individual escrow officer is not assigned until the day of the closing, will inserting the office information in the Closing Disclosure's Contact Information table be okay?

A: No; the information must be for an individual. See the CFPB's Comments to Section 1026.38(r):

6. *Contact*. Section 1026.38(r)(4) requires the disclosure of the primary contact for the consumer. The primary contact is the natural person employed by the person disclosed under § 1026.38(r)(1) who interacts most frequently with the consumer and who has an NMLSR ID or, if none, a license number or other unique identifier to be disclosed under § 1026.38(r)(5), as applicable. For example, if the senior loan officer employed by the creditor or mortgage broker disclosed under § 1026.38(r)(1) has an NMLSR ID, but the consumer meets with a different loan officer to complete the application and answer questions, the senior loan officer's name is disclosed under § 1026.38(r)(4) unless the other loan officer also has an NMLSR ID, in which case the other loan officer's name is disclosed. Further, if the sales agent employed by the consumer's real estate broker disclosed under § 1026.38(r)(1) has a State-issued brokers' license number, but the consumer meets with an associate sales agent to tour the property being purchased and complete the sales contract, the sales agent's name is disclosed under § 1026.38(r)(4) unless the associate sales agent also has a State-issued license number, in which case the associate sales agent's name is disclosed. Moreover, 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.

7. *Email address and phone number*. Section 1026.38(r)(6) and (7) requires disclosure of the email address and phone number, respectively, for the persons listed in § 1026.37(r)(4). Disclosure of a general number or email address for the lender, mortgage broker, real estate broker, or settlement agent, as applicable, satisfies this requirement if no such information is generally available for such person.

***Q:** What should my agent do when the lender insists that he provide them with a license number for himself and his agency in order to provide a Closing Disclosure?

- In my state, title/settlement agencies/law firms are not licensed by the state.
- In my state, title/settlement agent employees are not licensed by the state?

A:

- Business Entity: Under the Rule, if the business entity is not licensed by the state (i.e. it is not a corporation or the business type is not state licensed) then no license number is needed on the Closing Disclosure. In the Official Staff Interpretation regarding the row titled NMLS ID it states: "The space in the table is left blank for the disclosures in the columns corresponding to persons that have no NMLSR ID to be disclosed."
- Contact Person: Under the Rule, it the natural person who the consumer should contact is not licensed by the state (i.e. the state has no required procedure such as an individual title producer license or the person is not a licensed attorney) then no license number is needed on the Closing Disclosure. In the Official Staff Interpretation regarding the row titled Contact License ID it states: "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."

Selections from the TRID Rule regarding the license numbers required on the Closing Disclosure

Rule Preamble at page 1175:

During this three-business-day period, the Bureau stated its expectation in the proposal, that the consumer can review the Closing Disclosure, contact the creditor, closing agent, mortgage broker, and real estate brokers with questions regarding the information contained on the Closing Disclosure, and correct any errors prior to consummation. Accordingly, the contact information table required under proposed § 1026.38(r) would have made it easier for consumers

to contact the critical non-seller parties participating in the transaction during the three-business-day period prior to consummation. The inclusion of primary contact email addresses and phone numbers in the table also would have facilitated efficient communication between the consumer and the other parties.

Rule at page 1462-3:

§ 1026.38(r). *Contact information*. In a separate table, under the heading "Contact Information," the following information for each creditor (under the subheading "Lender"), mortgage broker (under the subheading "Mortgage Broker"), consumer's real estate broker (under the subheading "Real Estate Broker (B)"), seller's real estate broker (under the subheading "Real Estate Broker (S)"), and settlement agent (under the subheading "Settlement Agent") participating in the transaction:

(1) Name of the person, labeled "Name";
(2) Address, using that label;
(3) Nationwide Mortgage Licensing System & Registry (NMLSR ID) identification number, labeled "NMLS ID," or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, labeled "License ID," with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "License" in the label, for the persons identified in paragraph (r)(1) of this section;
(4) Name of the natural person who is the primary contact for the consumer with the person identified in paragraph (r)(1) of this section, labeled "Contact";
(5) NMLSR ID, labeled "Contact NMLS ID," or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, labeled "Contact License ID," with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "License" in the label, for the natural person identified in paragraph (r)(4) of this section;
(6) Email address for the person identified in paragraph (r)(4) of this section, labeled "Email"; and
(7) Telephone number for the person identified in paragraph (r)(4) of this section, labeled "Phone."

Excerpts of Staff Interpretation beginning at page 1869:

§ 1026.38(r)-2. *Name of person*. Where § 1026.38(r)(1) calls for disclosure of the name of the person participating in the transaction, the person's legal name (e.g., the name used for registration, incorporation, or chartering purposes), the person's trade name, if any, or an abbreviation of the person's legal name or the trade name is disclosed, so long as the disclosure is clear and conspicuous as required by § 1026.38(t)(1)(i). For example, if the creditor's legal name is"Alpha Beta Chi Bank and Trust Company, N.A." and its trade

name is "ABC Bank," then under § 1026.38(r)(1) the full legal name, the trade name, or an abbreviation such as "ABC Bank & Trust Co." may be disclosed. However, the abbreviation "Bank & Trust Co." is not sufficiently distinct to enable a consumer to identify the person, and therefore would not be clear and conspicuous. If the creditor, mortgage broker, seller's real estate broker, consumer's real estate broker, or settlement agent participating in the transaction is a natural person, the natural person's name is listed in the
§ 1026.38(r)(1) and (r)(4) disclosures (assuming that such natural person is the primary contact for the consumer or seller, as applicable).

Page 1870:

§ 1026.38(r)-4. *NMLSR ID*. The space in the table is left blank for the disclosures in the columns corresponding to persons that have no NMLSR ID to be disclosed under § 1026.38(r)(3) and (5); provided that, the creditor may omit the column from the table or, if necessary, replace the column with the contact information for an additional person.

Page 1871:

§ 1026.38(r)-5. *License number or unique identifier*. Section 1026.38(r)(3) and (5) requires 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.

Page 1871:

§ 1026.38(r)-6. *Contact*. Section 1026.38(r)(4) requires the disclosure of the primary contact for the consumer. The primary contact is the natural person employed by the person disclosed under §1026.38(r)(1) who interacts most frequently with the consumer and who has an NMLSR ID or, if none, a license number or other unique identifier to be disclosed under § 1026.38(r)(5), as applicable. For example, if the senior loan officer employed by the creditor or mortgage broker disclosed under § 1026.38(r)(1) has an NMLSR ID, but the consumer meets with a different loan officer to complete the application and answer questions, the senior loan officer's name is disclosed under § 1026.38(r)(4) unless the other loan officer also has an NMLSR ID, in which case the other loan officer's name is disclosed. Further, if the sales agent employed by the consumer's real estate broker disclosed under § 1026.38(r)(1) has a

State-issued brokers' license number, but the consumer meets with an associate sales agent to tour the property being purchased and complete the sales contract, the sales agent's name is disclosed under § 1026.38(r)(4) unless the associate sales agent also has a State-issued license number, in which case the associate sales agent's name is disclosed. Moreover, 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.

Corrected CD

Q: Are changes allowed on the CD on the day of closing?

A: The consumer must be given the opportunity to inspect one day prior, but doesn't have to wait the one day. So, yes, changes can be made day of (unless the change requires a new 3-day waiting period – APR increases above certain thresholds, loan product changes, or prepayment penalty is added). Here is the rule:

1. § 1026.19(f)(2) *Subsequent changes*. Changes before consummation not requiring a new waiting period. Except as provided in paragraph (f)(2)(ii), if the disclosures provided under paragraph (f)(1)(i) of this section 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**. Notwithstanding the requirement to provide corrected disclosures at or before consummation, the creditor shall permit the consumer to inspect the disclosures provided under this paragraph, completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately preceding consummation, but the creditor may omit from inspection items related only to the seller's transaction. [Emphasis added]

Q: What happens if an error is found more than 30 days after consummation?

A: The Rule limits the responsibility for monetary errors found within 30 days of consummation, and a corrected Closing Disclosure must be delivered or placed in the mail no later than 30 days thereafter. Therefore, any monetary error found later does not need a corrected Closing Disclosure. However a lender may, out of an abundance of caution, have a policy of correcting them whenever found. If the error is a non-numeric clerical error, a corrected Closing Disclosure must be delivered or placed in the mail not later than 60 days after consummation.

Q: What will happen when the amounts on the initial Closing Disclosure change and the settlement agent needs to re-draw the closing documents?

A: The settlement agent will need to consult the lender's closing instructions, but given the information currently available, the lender will expect that the settlement agent will contact the lender for, at a minimum, approval of the changes and probably the creation of a new Closing Disclosure.

Q: Is the creditor required to inform the settlement agent if it issued a corrected Closing Disclosure?
A: No. The creditor is only required to re-issue to the consumer.

Delivery (CD) – When

Q: If the HOA demand letter changes, will the Closing Disclosure have to be changed and then wait another 3 days?
A: There are only 3 events that will trigger a new 3 business day waiting period: 1) a change in the annual percentage rate that becomes inaccurate (increase) by the allowed amount (1/8 % for most loans, 1/4 % for certain loans); 2) the loan product changed; or 3) a prepayment penalty was added pursuant to 12 CFR § 1026.19(f)(2)(ii). If the change is not due to one of these 3 events, then a new Closing Disclosure must be provided to the consumer, but there will not be a new 3 business day waiting period pursuant to 12 CFR § 1026.19(f)(2)(i).

Q: If a borrower receives the Closing Disclosure by email and signs and returns via email, does receipt of the email start the clock for the 3 business days?
A: Mail, email, FedEx, email with eSign receipt, and in hand delivery all may require different rules with different business partners.

> Comment 19(e)(1)(iv)-2 provides guidance regarding delivery of the Loan Estimate by e-mail:
>
> 2. *Electronic delivery.* The three-business-day period provided in § 1026.19(e)(1)(iv) applies to methods of electronic delivery, such as email. For example, if a creditor sends the disclosures required under § 1026.19(e) via email on Monday, pursuant to § 1026.19(e)(1)(iv) the consumer is considered to have received the disclosures on Thursday, three business days later. The creditor may, alternatively, rely on evidence that the consumer received the emailed disclosures earlier. For example, if the creditor emails the disclosures at 1 p.m. on Tuesday, the consumer emails the creditor with an acknowledgement of receipt of the disclosures at 5 p.m. on the same day, the creditor could demonstrate that the disclosures were received on the same day.
>
> Creditors using electronic delivery methods, such as email, must also comply with § 1026.37(o)(3)(iii), which provides that the disclosures in § 1026.37 may be provided to the consumer in electronic form, subject to compliance

with the consumer consent and other applicable provisions of the E-Sign Act. For example, if a creditor delivers the disclosures required under § 1026.19(e)(1)(i) to a consumer via email, but the creditor did not obtain the consumer's consent to receive disclosures via email prior to delivering the disclosures, then the creditor does not comply with § 1026.37(o)(3)(iii), and the creditor does not comply with § 1026.19(e)(1)(i), assuming the disclosures were not provided in a different manner in accordance with the timing requirements of § 1026.19(e)(1)(iii).

Comment 1026.19(f)(1)(iii)-2:

2. *Other forms of delivery*. Creditors that use electronic mail or a courier other than the United States Postal Service also may follow the approach for disclosures provided by mail described in comment 1026.19(f)(1)(iii)-1. For example, if a creditor sends a disclosure required under § 1026.19(f) via email on Monday, pursuant to § 1026.19(f)(1)(iii) the consumer is considered to have received the disclosure on Thursday, three business days later. The creditor may, alternatively, rely on evidence that the consumer received the emailed disclosures earlier after delivery.

See comment 19(e)(1)(iv)-2 for an example in which the creditor emails disclosures and receives an acknowledgment from the consumer on the same day. Creditors using electronic delivery methods, such as email, must also comply with § 1026.38(t)(3)(iii). For example, if a creditor delivers the disclosures required by § 1026.19(f)(1)(i) to a consumer via email, but the creditor did not obtain the consumer's consent to receive disclosures via email prior to delivering the disclosures, then the creditor does not comply with § 1026.38(t)(3)(iii), and the creditor does not comply with § 1026.19(f)(1)(i), assuming the disclosures were not provided in a different manner in accordance with the timing requirements of § 1026.19(f)(1)(ii).

Q: What is acceptable proof of delivery of the Closing Disclosure?

A: The rule says that delivery is made in hand, is mailed via the US Postal Service and three business days have passed, or if the creditor has actual proof of delivery in another format such as a signed receipt from a courier such as FedEx or UPS. If it is delivered electronically the creditor must comply with the federal E-Sign Act. A cautious approach would be to obtain a waiver from all parties.

Q: What type proof is needed from the lender that the Buyer/Borrower Closing Disclosure has been delivered?

A: Written evidence from the lender via lender instructions, email, or task comments in your software program.

Q: Are there any timing requirements with respect to the delivery of the CD to the seller?

A: The settlement agent shall provide the seller's disclosures no later than the day of consummation. See 12 CFR § 1026.19(f)(4)(ii).

Examples:

Mail Delivery

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
16	17	18	19	20 Closing Disclosure MAILED	21 Mail Day 1	22 Mail Day 2
23 **Sunday doesn't count**	24 Mail Day 3 = Receipt = Disclosure 3 Bus Days Prior to Consummation	25 2 Bus Days Prior to Consummation	26 1 Business Day Prior to Consummation	27 Consummation	28	29

Hand Delivery

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
16	17	18	19	20	21	22
23	24 Hand Delivery = Receipt = Disclosure 3 Bus Days Prior to Consummation	25 2 Bus Days Prior to Consummation	26 1 Bus Day Prior to Consummation	27 Consummation	28	29

Refinances

Even with 3 days advance disclosure before closing (consummation), the 3-day rescission period pursuant to 12 CFR § 1026.23 still applies in a refinance of principal residence:

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
16	17	18	19	20 Closing Disclosure MAILED	21 Mail Day 1	22 Mail Day 2
23 Sunday doesn't count	24 Mail Day 3 = Receipt = Disclosure 3 Bus Days Prior to Consummation	25 2 Bus Days Prior to Consummation	26 1 Bus Day Prior to Consummation	27 Consummation	28 Rescission Day 1	1 Rescission Day 2
2 Sunday doesn't count	3 Rescission Day 3 = Rescission expires at midnight	4 Okay to disburse	5	6	7	8

Delivery (CD) – To Whom

Q: Who is responsible for the delivery of the Closing Disclosure form to the Borrower?

A: The lender is responsible pursuant to 12 CFR § 1026.19(f)(1)(i), but may delegate that responsibility to the settlement agent pursuant to 12 CFR § 1026.19(f)(1)(v). If the settlement agent provides the disclosure, the settlement agent must comply with all the requirements and the lender must ensure that such disclosures are provided in accordance with all the requirements pursuant to 12 CFR § 1026.19(f)(1)(v).

Q: Can the Settlement Agent distribute the buyer/borrower's Closing Disclosure to the Realtor® (or other party) without the buyer/borrower's written consent?

A: A cautious approach would be to obtain a waiver from all parties, including, most importantly, the lender. Although "the Bureau believes that including on the Closing Disclosure summaries of the consumer's and seller's transactions will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice to home buyers and sellers of settlement costs, respectively" (see pp. 1065-1066 discussion in the TRID Rule), it recognized that privacy considerations may arise and that "some State laws may prohibit provision of information about the consumer to the seller and about the seller to the consumer." (See: p. 1854 re.12 CFR § 1026.38(j))

Therefore, 12 CFR § 1026.39(t)(5)(v) and (vi) allows the creditor or settlement agent to leave blank or delete "certain information regarding the consumer's transaction from the disclosure provided to a seller or third party."

According to page 1467 of the Rule, when discussing 12 CFR § 1026.38(t)(5):

> (A) The information required to be disclosed by paragraphs (j) and (k) of this section may be disclosed on separate pages to the consumer and the seller, respectively, with the information required by the other paragraph left blank. The information disclosed to the consumer pursuant to paragraph (j) of this section must be disclosed on the same page as the information required by paragraph (i) of this section.
>
> (B) The information required to be disclosed by paragraphs (f) and (g) of this section with respect to costs paid by the consumer may be left blank on the disclosure provided to the seller.
>
> (C) The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (i), (l) through (p), (r) with respect to the creditor and mortgage broker, and (s)(2) of this section may be left blank on the disclosure provided to the seller.
>
> (vi) Modified version of the form for a seller or third-party. The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f) and (g) with respect to costs paid by the consumer, (i), (j), (l) through (p), (q)(1), (r) with respect to the creditor and mortgage broker, and (s) of this section may be deleted from the form provided to the seller or a third-party, as illustrated by form H-25(I) of appendix H to this part.

You can see these Rule sections on the Annotated Closing Disclosure form at: http://files.consumerfinance.gov/f/201312_cfpb_tila-respa_annotated-closing-disclosure.pdf

Q: Can the Settlement Agent distribute the buyer/borrower's Closing Disclosure to the Realtor® (or other party) with the buyer/borrower's written consent? For example, there is a Texas Association of Realtors form that may be signed by the buyer/borrower to allow the release or disclosure of the buyer's documents used in the transaction to a designated party.

A: Our position in regards to a form that is signed by the parties to the transaction allowing a copy of the CD to be provided to the parties' respective real estate professionals is that, despite this form having been authorized/signed by the parties to the transaction, the CD is a lender form regulated under Federal law, and as such, the settlement agent must follow the instructions of the lender. Accordingly, if the lender allows the settlement agent to provide a copy of the

borrower's CD to the borrower's real estate agents or other designated representative, then the settlement agent may do so. However, if the lender prohibits the settlement agent from providing copies of the borrower's CD to third parties, the settlement agent must follow those instructions, regardless of a signed authorization form from the borrower. In light of the foregoing, the determination to deliver the CD to third parties must be made on a file by file basis. A consent form would help lenders show that consent was given by their borrowers to provide the CD to another party, but ultimately, it is the lender's decision as to whether the settlement agent may or may not provide it to anyone other than the consumer.

A settlement agent may provide a copy of the seller's CD to a third party if authorized in writing by the seller because the seller's CD is the responsibility of the settlement agent.

Q: If an unmarried couple owns property jointly, can one CD be delivered, or must each borrower receive a separate CD? Does the answer change if they are married?

A: The delivery of the CD, like delivery of the LE, is dictated by the rules around TILA. Consequently as is it the case today for TILA disclosures, when there are multiple consumers (of any marital status) who are jointly obligated with primary liability, the disclosure can go to any one of them. The exception arises when there is a right of rescission (a 'refinance'). In that case, the Closing Disclosure must be given to any person with the right to rescind- meaning anyone who has a property interest, regardless of whether they are on the loan obligation. See page 1670 of the Rule, and existing section § 1026.17(d).

Q: Does the Seller have to consent to the fact that the disclosure of their information is being given to the Buyer's lender? Do the privacy rules affect their Closing Disclosure?

A: Federal regulations require the Seller's information to be furnished to the Buyer's lender. See 12 CFR § 1026.19(f)(4)(iv) and Federal Compliance/Privacy/Regulations/Privacy of Consumer Financial Information (16 CFR § 313.15(a)(7)(i), dated 01/01/03), issued pursuant to the Gramm-Leach-Bliley Act.

Q: If the settlement agent is preparing the seller's CD for a split closing, does the information for the seller's CD have to be given to the buyer's settlement agent if the lender requests the buyer's SA to enter the seller-side information into the lender's system?

A: If the buyer's settlement agent is responsible for entering all Closing Disclosure information into the lender's system, the lender may provide that information to the settlement agent, after receiving it from the seller's settlement agent. This process will require coordination of the timing for delivery of the seller's CD to the lender.

Q: What kind of Settlement Statement (e.g. Combined, Buyer-Only or Seller-Only) can the seller-only or buyer-only settlement agent deliver, and to whom?

A: The answer would be the same for any closing. The type of settlement statement and to whom it may be sent will depend on: (1) the lender's instructions or (2) the contract or other law or custom in the area. Some states may prohibit or require the distribution of a settlement statement to certain parties.

Q: Is there a difference between to whom a settlement agent may deliver a Closing Disclosure if the CD is the 'initial' one, not a corrected one? If it is before the closing, during the closing, or after the closing? If the settlement agent is preparing the CD, delivering it, or neither?

A: There is no difference among all of the suggested scenarios. Ultimately, it is the lender's decision as to whether the settlement agent may or may not provide the buyer's CD to anyone other than the consumer. A settlement agent must provide a copy of the seller's CD to the buyer's lender and may provide it to a third party if authorized in writing by the seller because the seller's CD is the responsibility of the settlement agent.

Q: If the settlement agent is responsible for delivering the Closing Disclosure and the settlement agent uses a courier service for delivery, can the settlement agent charge a fee for delivery?

A: "No fee may be imposed on any person, as a part of settlement costs or otherwise, by a creditor or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for the preparation or delivery of the disclosures required under paragraph (f)(1)(i) of this section." - Page 1392 of the rule.

Q: Is there a requirement for settlement agents to retain a copy of the borrower's Closing Disclosure in their files, when the lender prepared and delivered the CD?

A: The Preamble to the Rule refers to the lender/creditor responsibility only, and the Rule itself states "A creditor shall retain each completed disclosure . . . for five years after consummation." Therefore, it is not a requirement of the Rule that the Settlement Agent retain a copy of the borrower's Closing Disclosure in their files, when the lender prepared and delivered the CD.

Expiration Date (CD)

Q: Does the Closing Disclosure (CD) expire?

A: The CD doesn't expire just as there is never a "Final" CD. There will eventually be a last CD transmitted, but nothing marked as final. A CD that is inaccurate hasn't expired, but will need a Corrected CD to correct the inaccuracies, if found within the timeframe stated by the Rule.

FHA Loan

Q: What should a settlement agent do about FHA's certification if a lender prepares the Closing Disclosure?

A: Earlier in 2015, the FHA released its new certification, which stated:

> *To the best of my knowledge, the Closing Disclosure **which I have prepared** is a true and accurate account of the funds which were 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]

Following the release of the certification, ALTA reached out to the FHA, the Mortgage Bankers Association, and individual lenders to inform them that, if left unchanged, this certification puts settlement agents in the untenable position of falsely signing the certification or holding up transactions for the FHA's low income and first-time homebuyers.

To address this problem, the FHA announced in its FHA Single Family Housing Policy Handbook FAQ, updated August 26, 2015, (FAQ#374) that settlement agents could strike the "which I have prepared" language from the certification if they did not prepare the Closing Disclosure. The FAQ states:

> Q: The Model Settlement Certification requires the Settlement Agent certifying that he or she has prepared the Closing Disclosure but the CFPB's requirements for issuing the new TRID Closing Disclosure will make this unlikely to be the case. Should the new Settlement Agent sign the form anyway?
>
> 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]

Financial Emergency

Q: What constitutes a financial emergency?

A: There are very few actual examples in federal rulemaking or case law interpreting this section of the Truth in Lending Act. The Truth in Lending Act created the concept in conjunction with the imposition of the 3 day right of rescission for a refinance transaction. 12 CFR § 1026.23 (e) states that: "The consumer may modify or waive the right to rescind if the consumer determines

that the extension of credit is needed to meet a bona fide personal financial emergency."

The Official Staff Interpretations do not give any examples of what constitutes such an emergency but cautions that:

> "The existence of the consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission," meaning that the lender could still be liable under the law for all of the penalties associated with failure to allow the right to rescind, even if the consumer asked for the waiver. Consequently, lenders have been extremely reluctant to allow such waivers.

In the preamble commentary to the Final rule, the CFPB states that it:

> "recognizes that the limited guidance on what constitutes a bona fide personal financial emergency may limit the use of the waiver, but the Bureau believes the waiver should be reserved for limited use: when a consumer faces a true financial emergency, as distinct from an inconvenience."

In the Official Staff Interpretation to 12 CFR § 1026.19(f)(1)(iv) they state:

> "The 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."
>
> And in the preamble commentary, its notes that this is only one example and that it is "illustrative and not exhaustive" and that other situations such as a "sudden unforeseen military service deadline" or "unforeseen medical emergency" might qualify "depending on the fact and circumstances of the individual case."

A search for Federal Reserve guidance (since the Federal Reserve was the agency that oversaw Truth in Lending prior to the CFPB) shows only a few examples such as the existence of a federally declared natural disaster (storms, floods and the like).

Funds Held (CD)

Q: If funds are held for payment of repairs or for another reason, where would the funds held amount be shown on the CD?

A: Funds held from seller for payment of repairs or for another reason would be shown on lines N09-N13 pursuant to the following:

Rule Reference: Section 1026.38(k)(2)(viii). A description and 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;

> Comment 38(k)(2)(viii)-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.

Funds held from the borrower for payment of repairs would be shown on lines J05-J07 pursuant to the following:

> Section 1026.38(j)(1)(v) A description and the amount of any additional items that the seller has paid prior to the real estate closing, but reimbursed by the consumer at the real estate closing, and a description and the amount of any other items owed by the consumer at the real estate closing not otherwise disclosed pursuant to paragraph (f), (g), or (j) of this section;
>
> Comment 1026.38(j)(1)(v)-2. *Other consumer charges*. The amounts disclosed under § 1026.38(j)(1)(v) which are for charges owed by the consumer at the real estate closing not otherwise disclosed pursuant to § 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv). For example, the amounts paid to any existing holders of liens on the property in a refinance transaction, and any outstanding real estate property taxes are disclosed under § 1026.38(j)(1)(v) without a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv).

Q: Is there anything in the new CFPB regulations which requires "ALL" purchase monies be held in escrow? I am wondering because so many of our big builders have 600A bonds which allow them to use a portion of the purchaser's deposit monies.

A: There is no requirement in the TRID Rule that requires "ALL" purchase monies be held in escrow, but all deposits, no matter who holds, must be reflected on the Closing Disclosure. The instructions for lines L01 and N01 should provide the guidance you are looking for. Line N01 may be more relevant to builders using a portion of the buyer's deposit monies.

The instructions for line L01 are contained in section 1026.38(j)(2)(ii) on page 1451 of the rule and provide:

> § 1026.38(j)(2)(ii).
> (ii) Any amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the

property, labeled "Deposit";

Comments 38(j)(2)(ii)-1 and -2, found on pages 1856-57 provide additional guidance:

Paragraph 38(j)(2)(ii).
1. Deposit. All amounts paid into a trust account by the consumer pursuant to the contract of sale for real estate, any addenda thereto, or any other agreement between the consumer and seller must be disclosed under § 1026.38(j)(2)(ii). If there is no deposit paid in a transaction, that amount is left blank on the Closing Disclosure.

2. Reduction of deposit when deposit used to pay for closing charges prior to closing. If the consumer's deposit has been applied toward a charge for a closing cost, the amount applied should not be included in the amount disclosed pursuant to § 1026.38(j)(2)(ii), but instead should be shown on the appropriate line for the closing cost in the Closing Cost Detail tables pursuant to § 1026.38(f) or (g), designated borrower-paid before closing.

The instructions for line N01 demonstrate how to deal with deposits that are disbursed to the seller prior to closing. Again, there is no requirement that the purchase moneys remain in escrow, but they must be reflected on the Closing Disclosure on line N01. The instructions for line N01 are contained in section 1026.37(k)(2)(ii) on page 1454 and provide:

§ 1026.38(k)(2)(ii).
(ii) The amount of any excess deposit disbursed to the seller prior to the real estate closing, labeled "Excess Deposit";

Comment 38(k)(2)(ii)-1, found on page 1861, gives the same guidance.

Paragraph 38(k)(2)(ii).
1. Distributions of deposit to seller prior to closing. If the deposit or any portion thereof has been disbursed to the seller prior to closing, the amount of the deposit that has been distributed to the seller must be disclosed under § 1026.38(k)(2)(ii).

Q: If there is an early release of borrower's funds to the seller, where would this show on the CD?

A: The early release of borrower's funds would appear on line N01 "Excess Deposit" pursuant to the following provisions of the Rule:

Section 1026.38(k)(2)(ii): The amount of any excess deposit disbursed to the seller prior to the real estate closing, labeled "Excess Deposit";

Comment 38(K)(2)(ii)-1. *Distributions of deposit to seller prior to closing.* If the deposit or any portion thereof has been disbursed to the seller prior to closing, the amount of the deposit that has been distributed to the seller must be disclosed under § 1026.38(k)(2)(ii).

Line Usage

Q: Are there unlimited lines available for additional costs to be shown on the Closing Disclosure?

A: No. Line numbers provided on page 2 of the Closing Disclosure that are not used may be deleted and the deleted line numbers added to the space provided for any other paragraph on page 2 as necessary to accommodate the disclosure of additional items pursuant to § 1026.38(t)(5)(iv)(A). To the extent that adding or deleting line numbers provided on page 2 does not accommodate an itemization of all information required to be disclosed on page 2, the information may be disclosed on pages 2a for the Loan Costs and page 2b for the Other Costs pursuant to § 1026.38(t)(5)(iv)(B). If more lines are needed for page 3 an additional sheet may be added pursuant to comments 38(j)-2 and 38(k)-2. This is where customary recitals and information used locally in real estate closings (for example, a breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, an accounting of debits received and check disbursements, a statement stating receipt of funds, applicable special stipulations between consumer and seller, and the date funds are transferred) can be disclosed.

Proration (CD)

Q: CA and other Western states don't have final day for considering prorations; what will they do?

A: Today, in California, the proration date is typically the "close of escrow" as it is considered in the escrow instructions or contract/purchase agreement between the buyer and seller. The term "close of escrow" in CA is usually the recording date. The definition of the Closing Date may be considered synonymous with the Consummation date, while recording triggers disbursement in the West, and is currently the date used for proration. So, if recording date changes after CD is issued, prorations will change and a corrected CD will be issued to both borrower and seller.

If no state law exists which would specifically address the dates prorations would be handled, settlement agents would look to the terms of the purchase agreement to determine what proration date should be used. There may be some efforts by these states' Boards of Realtors® to amend current forms to clarify the expectation of what date to prorate as well, so watch for such changes/amendments.

Q: What happens to prorations and per diems when the recording and disbursement are not on the same day as the consummation?

A: The settlement agent can advise the lender that the proration date will be after the consummation date at the time the Closing Disclosure is being created (assuming it is created by the lender). Per diem amounts for payoffs can be calculated as they are today, based on the settlement agent's expectations of the delivery dates. If the lender prepared the Closing Disclosure as if consummation and recording/disbursement were going to occur on the same day and the recording is later, then a corrected Closing Disclosure may be issued.

Real Estate Commissions

Q: Do settlement agents have an obligation to disclose real estate commission breakdowns that were not previously disclosed on the HUD-1 settlement statement?

A: Real Estate Agent commissions should be shown based on full amounts, not the amount actually 'held' if one of them is holding the deposit. Only the full real estate commission is disclosed on the Closing Disclosure (CD); however, in order to provide accurate accounting of all funds, settlement agents may include breakdown of real estate commissions on separate settlement statement.

Q: A real estate agent recently asked, "Does the 'listing fee/transaction fee' that some Realtors® charge have to be itemized under the new rule?"

A: On page 1842 of the Rule, the Official Comment to § 1026.38(g)(4)- 4, *Real estate commissions*, states: The amount of real estate commissions pursuant to § 1026.38(g)(4) must be the total amount paid to any real estate brokerage as a commission, regardless of the identity of the party holding any earnest money deposit. Additional charges made by real estate brokerages or agents to the seller or consumer are itemized separately as additional items for services rendered, with a description of the service and an identification of the person ultimately receiving the payment.

Sections on the Closing Disclosure (CD)

Q: What types of fees would go under Section E, Line 02?

A: You would place any taxes or fees payable to the Recorder's Office there.

Q: Can a charge move from being in section C on the Loan Estimate to section B on the Closing Disclosure form (i.e., when borrower shops for a service and uses a provider that's an affiliate)?

A: Yes. When the lender gives the borrower the Loan Estimate, any items in "Section B Cannot Shop For" will ALWAYS be in the 0% category because they fail to meet 12 CFR § 1026.19(e)(3)(ii)(C). If the lender permits the consumer to shop pursuant to 12 CFR § 1026.37(f)(3), provides a written list of

settlement service providers as required by 12 CFR § 1026.19(e)(1)(vi)(C) and the consumer selected a settlement service provider contained on the written list, then the item is shown in Section B "Services Borrower Did Not Shop For" pursuant to the last sentence of 12 CFR § 1026.37(f)(2).

Q: Where does a post-closing escrow fee go on the CD?
A: An amount held by the settlement agent for a cost not yet known at the time of closing goes in Section M of the original Closing Disclosure. Once the amount is disbursed a re-disclosure is optional.

Q: Where does the name of the title insurance underwriter go on the CD?
A: While the example provided by CFPB shows the payee of the title insurance premium as Epsilon Title, it is possible that the lenders will prefer to see the name of the underwriter, rather than the agent, or a recitation of "Agency Name/ FATIC". Each lender should make that decision based on their understanding of the rule. Any fee paid directly to the underwriter (such as the CPL fee in some states) would name the underwriter as the payee.

Q: What will happen with signature lines on the CD?
A: The CFPB (like HUD before it) does not require signatures on the Closing Disclosure (just as they are not now required on the HUD-1). The Rule requires that the form have a disclaimer explaining to the borrower that they are not obligated to close on the loan simply because they have received the CD. However, it is expected that lenders will want to have some verification that the CD has been received and probably most lenders will use a signature to confirm that. However, they may also use electronic delivery verification as well.

i. Fannie Mae and Freddie Mac have also indicated that they will want signatures on the forms (February 24 2015 UDS FAQ's).

   For many settlement agents, the purpose of the signature line has also been to provide verification that all the parties have seen the figures, agreed with their accuracy, and are authorizing the settlement agent to disburse in accordance with the document. For that purpose, signatures on the Closing Disclosure will not be sufficient, as many items are either not fully itemized (such as recording fees) or are incorrect (such as the cost of the title insurance policy in some states that have simultaneous issue rates.) It is anticipated that a Settlement Statement, such as the one promulgated by the ALTA, will be used to document the appropriate listing of amounts and payees, and signatures on that will serve those purposes.

Q: Where do excise taxes go on the CD?

A: If the excise tax is a transfer tax (one that is based on the loan or sales price and paid to the government), it goes on page 2 in section E after the single line for recording fees. In the event that there is more than one taxing entity, a separate line may be added for the additional tax.

Q: Does the MIC number on page 1 of the Closing Disclosure include the FHA case number information?
A: Yes, the MIC number is for any mortgage insurance policy required by the lender.

Q: Where would a credit from the settlement agent or title agent to the borrower go on the CD?
A: That credit would go on page 3 in section L, or if it were for a specific fee on page 2, it could be shown in the column called "Paid by Others".

Q: Where does a credit from the seller to the buyer go on the Closing Disclosure?
A: It can go in one of two places: either for a specific cost on page 2 where it would show as a seller-paid item in section A, B, C, E, F or G; or, if it is a general credit or a credit for an item not on page 2, it would go on page 3 in section L and N.

Q: If the contract provides that the seller will give a credit to the buyer of a specific amount, for example $1500, toward the owner's policy premium, how would that show on the CD? (1) split premium between Buyer Paid at Closing and Seller Paid at Closing columns in Section H, or (2) show as a Seller Credit on L-05 and N-08?
A: The premium would be split between buyer and seller on page 2 of the Closing Disclosure. 12 CFR § 1026.38(j)(2)(v) reads: "The total amount of money that the seller will provide at the real estate closing as a lump sum not otherwise itemized to pay for loan costs as determined by paragraph (f) of the section and other costs as determined by paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled 'Seller Credit';" Since the cost of the owner's title insurance premium would be itemized in section H of the form as determined by paragraph (g)(4), it would not be included in the "Seller Credits" on page 3."

Q: We have heard that some lenders want HOA dues to be shown in the Loan Costs, but others say they will go in Section H – Other. Does that mean that some of the items in section H do have tolerance requirements, such as HOA Dues and fees, and must be quoted precisely on the LE and CD by the lender?
A: In the Rule (Section 1026.37(f)(2)- staff interpretation at page 1794), it says that the fee paid to a Home Owner's Association for a certificate of no lien or to a subordinating bank for preparation of a subordination agreement is a 0% tolerance amount due to the fact that it is required by the lender and that the consumer cannot shop for the service provider (obviously, since you can't get a

certificate of no lien in the Happy Hollows subdivision from the treasurer of the Sleepy Hollow subdivision).

But the actual amount of Home Owner's Association dues is in the unlimited category (for example a 2-month reserve being established at closing).

Q: May more than one box be checked in the "Partial Payment" section of the "Closing Disclosures" section on page 4 of the CD?

A: We don't believe so based on section 1026.38(l)(5) of the rule and the discussion of it in the section-by-section analysis. The three choices are mutually exclusive. The choices are:

1. Accepted and applied
2. Accepted but not applied until the remainder is paid
3. Not accepted

See excerpts from the rule and the section-by-section analysis below. In the section-by-section analysis the use of the word "or" between the three possibilities suggests that only one possibility can be selected, excluding the others.

§ 1026.38(l)(5)

(5) Partial payment policy under the subheading "Partial Payments":

(i) If periodic payments that are less than the full amount due **are accepted**, a statement that the creditor, using the term "lender," may accept partial payments and apply such payments to the consumer's loan;

(ii) If periodic payments that are less than the full amount due **are accepted but not applied** to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the creditor, using the term "lender," may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;

(iii) If periodic payments that are less than the full amount **due are not accepted**, a statement that the creditor, using the term "lender," does not accept any partial payments; and (iv) A statement that, if the loan is sold, the new creditor, using the term "lender," may have a different policy. [Emphasis added]

Section-by-Section Analysis

. . .

38(l)(5) Partial Payment Policy

. . .

Final Rule

The Bureau is adopting § 1026.38(l)(5) with modifications to address concerns regarding compliance with the proposed disclosure requirements. As adopted, § 1026.38(l)(5) requires the creditor to disclose, under the subheading "Partial Payments," a statement of whether the creditor accepts periodic payments that are less than the full amount due. If the creditor may accept such payments, and apply the payments to the consumer's loan, **or** if the creditor may hold the payments in a separate account until the consumer pays the rest of the payment, **or** if the creditor does not accept any partial payments, then the disclosure would have had to state that fact. Additionally, similar to the proposal, § 1026.38(l)(5) requires a statement that, if the loan is sold, the new creditor may have a different policy. [Emphasis added]

Q: A lender showed a credit for points on their Loan Estimate in "Section A. Origination Charges" as a negative charge and wants us to do the same on the Closing Disclosure. Is this correct?

A: The TRID Rule requires both "non-specific" (sometimes referred to as "general") and "specific" lender credits to be combined and shown in the Lender Credits line of Section J. of the Loan Estimate. (See Section-by-Section Analysis of Section 37(g)(6) Total Closing Costs; Section 1026.37(g)(6)(ii); Comment 37(g)(6)(ii)-2; and Comment 19(e)(3)(i)-5.) On the Closing Disclosure the "general" lender credits continue to be shown in Lender Credits line, but "specific" lender credits are shown in the "Paid by Others" column of the "Loan Costs" (Sections A-C) and "Other Costs" (Sections E-H) tables. (See Section 1026.38(h)(3); and Paragraph 38(h)(3).) However, if there is no charge against which to offset the credit, in order to make the file balance, it would be necessary to show the credit the Lender Credits line of Section J. There does not appear to be any guidance for this situation in the Rule.

"Non-specific" or "general" lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures Specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. (See Comment 19(e)(3)(i)-5.)

Example 1: Points are $1,000 and lender will credit $200.

- On the Loan Estimate Points of $800 would be shown in Loan Costs Section A and the $200 credit would be shown in Section J. Lender Credits.
- On the Closing Disclosure Points of $800 would be shown in the Loan Costs Section on Line A.01 in the Borrower-Paid At Closing Column and the $200 would be shown on the same line in the Paid by Others column.

The lender may put an (L) to the left of the amount in the Paid by Other screen.

Example 2: Lender is charging no points, but is giving a credit of $1,000 for points.

- On the Loan Estimate the entire $1,000 credit would be shown in Section J. Lender Credits.
- On the Closing Disclosure Points the entire $1,000 would also need to be shown in Section J. Lender Credits. If the full $1,000 was shown in the Paid by Others column the borrower would receive no credit because the Paid by Others column and the Borrower's charges are not combined. In other words, the file wouldn't balance.

Substitute 1099 Form

Q: Will substitute 1099 language still be available on the new form?

A: The Closing Disclosure does not include the substitute 1099 language.

Q: Since the 1099 certification is no longer available on the CD, or Seller's CD, will the agent be required to snail mail a 1099 to the Seller?

A: Yes, unless the IRS revises IRS Publication 1179, General Rules and Specifications for Substitute Forms and Schedules. Currently, Publication 1179 refers to the HUD-1 and not the Closing Disclosure. If that doesn't change, the agent will be required to snail mail a 1099 to the Seller. Additionally, because the rule states the disclosures are to be segregated from everything else, the CFPB will likely not allow the 1099-S to be included with the Closing Disclosure.

Title Insurance Premiums (CD)

Q: Does the owner's title insurance premium have to appear on the borrower's side even if the seller is paying?

A: No. If the Seller is paying, it will appear in the Seller column.

Q: If the purchase contract says the seller is going to pay for the owner's title policy, can the seller still dictate which title agent issues the policy?

A: There are two activities: "Conducting the Settlement" (which usually includes the handling of the money and is the primary concern to the lender) and "Issuing the Title Insurance Policy," and there are two policies: a loan policy and an owner's policy.

Until the TRID rule highlighted to lenders just how important it is to have a settlement agent that knows what she is doing, many lenders just went along with the selection by the seller and buyer, assuming that title and settlement agents all delivered the same quality of service. Now, armed with things like Best Practices and fearing the fines of the CFPB, lenders are saying, "I don't care WHO you selected in the Purchase Contract, I decide which settlement agent is doing the closing."

Whether or not the lender may choose the title agent to issue its loan policy is based on state law. If the state does not prohibit a lender from refusing to take a title policy from the provider of the buyer's choice, the lender's selection of loan policy title agent prevails.

The owner's policy may be provided by law, custom or contract. If, in this scenario, the seller pays for the owner's policy, the seller may dictate who issues the owner's policy.

Why? Because while RESPA section 9 states:

"**12 USC 2608: Title companies; liability of seller (01/03/07)**

(a) No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.

(b) Any seller who violates the provisions of subsection (a) of this section shall be liable to the buyer in an amount equal to three times all charges made for such title insurance."

It is modified by Regulation X which states:

"**12 CFR § 1024.16: Title Companies (01/10/14)**

No seller of property that will be purchased with the assistance of a federally related mortgage loan shall violate section 9 of RESPA (12 USC 2608). Section 1024.2 defines "required use" of a provider of a settlement service."

And in the definitions it says:

"§ 1024.2: Definitions (01/10/14)

(a) Statutory terms. All terms defined in RESPA (12 USC 2602) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) Other terms. As used in this part:

Required use means a situation in which **a person must use a particular provider** of a settlement service in order to have access to some distinct service or property, and **the person will pay for the settlement service** of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process." [Emphasis added]

But note - this only relates to the issuance of title insurance, not the conduct of the closing.

There may also be the issue of the simultaneous issue rate. Even though the seller is paying for the insurance, and therefore can pick the provider of that policy, the seller still can't override the lender's right to choose the closing/settlement agent, and the lender may also have the right to select the title agent for the loan policy. The Seller then doesn't get the advantage of simultaneous issue rates, but still has to pay for the owner's policy. And the Lender wins on the issue of who does the closing.

Conclusion: In some states, the law allows the borrower to choose the title agent for himself and perhaps his lender. If the seller is paying for the owner's policy, she can choose that provider. But no one can force the lender to use a closing/settlement agent without the lender's approval.

VA Loan (CD)

Q: On a VA No-No loan where the borrower pays no closing costs and no down payment, where on the CD would the refund of the borrower's earnest money deposit be shown? Or would it simply show at the bottom of Section L on page 3 as Cash To Borrower?

A: Show any return of deposit on a VA No-No loan as cash to the borrower at the bottom of the Summaries of Transactions page as we do today. There does not appear to be any guidance in the TRID Rule to the contrary.

Rule Reference: OSI 37 (h)(1)(iii) and (iv) (page 1805):
37(h)(1)(iii) *Down payment and other funds from borrower*.
1. *No down payment or funds from borrower*. When the loan amount exceeds the purchase price of the property (other than a construction loan), the amount of $0 is disclosed under § 1026.37(h)(1)(iii).

37(h)(1)(iv) *Deposit*.
1. Section 1026.37(h)(1)(iv)(A) requires disclosure of a deposit in a purchase transaction. The deposit to be disclosed under § 1026.37(h)(1)(iv)(A) is any amount that the consumer has agreed to pay to a party identified in the real estate purchase and sale agreement to be held until consummation of the transaction, which is often referred to as an earnest money deposit. In a purchase transaction in which no such deposit is paid in connection with the transaction, § 1026.37(h)(1)(iv)(A) requires the creditor to disclose $0. In any other type of transaction, § 1026.37(h)(1)(iv)(B) requires disclosure of the deposit amount as $0.

Q: On a purchase where there is an amount owed to the borrower (due to the size of the deposit in a VA loan transaction for instance), may the amount shown in "Cash to Close" be a negative number?

A: The amount in "Cash to Close" may be a negative number in a sale transaction. The official commentary sums it up well - Comment 38(i)(9)(ii) - *Final cash to close amount*. The "Final" amount of "Cash to Close" disclosed under § 1026.38(i)(9)(ii) is the same as the amount disclosed on the Closing Disclosure as "Cash to Close" under § 1026.38(j)(3)(iii). If the calculation required by § 1026.38(i)(9)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

Variations

For more information about variation-tolerance questions, see, "Road Map to TRID Rule Variations-Tolerances" at: https://registration.firstam.com/EA/AgentNet/TRIDInfographicsandHandouts/RoadMaptoTRIDRuleVariationsTolerances-FA-WB.pdf.

Q: If the lender allows the buyer/borrower to shop for the title company, but the one the buyer picks is also on the lender's "Written List of Providers", will the fees fall in the 0% or 10% category?

A: If the borrower selects a provider on the lender's "Written List of Providers", the fees will be in the 10% tolerance group and will show on the CD in section B, "Services Borrower Did Not Shop For".

Q: If a customer named a settlement agent to perform the closing on their purchase contract, would it impact where the Settlement Agent fees would fall under a tolerance level on the Closing Disclosure?

A: Even if the builder has inserted the name of a settlement agent on the purchase contract, and the borrower has assumedly agreed to that choice by signing the contract, the lender is still in charge of the selection. If the lender says to the borrower, "I have the right to select the settlement agent and I pick Agent X", then the lender has not allowed the borrower to shop for the settlement agent and the choice in the contract is nullified and the charge is now a zero tolerance (variance) amount.

If the lender says to the borrower, "Here is a list of providers and if you select one of them their fees will be subject to certain caps, but please shop and if you find someone else, let me know, and as long as they meet minimum standards, you can use them", and if the borrower says, "I already selected this guy that is in my purchase contract." Then, if the person named in the contract is also on the Written List of Providers, the charge is in the 10% tolerance (variance) group. But if the person isn't on the Written List of Providers and the lender approves of the use of this settlement agent for this transaction, then the fee is in the unlimited tolerance (variance) group.

Q: If a title agency is an affiliate of the lender, would charges by this agency be subject to the 0% tolerance or variance category, as opposed to 10%, even

where the borrower is allowed to shop, does shop, and still chooses the affiliated agency for title/escrow services?

A: If a title agency is owned by the lender to the extent that it qualifies as an affiliate under the Bank Holding Act, and it provides a lender-required service, then the charges are in the 0% tolerance group. (See page 1687 in the Official Staff Interpretation). If the borrower shops for a NON-required service and picks an affiliate, then it is in the unlimited group, but if it is a required service, it stays in the 0% tolerance group.

Q: Why is the Closing Protection Letter fee a zero tolerance amount? Shouldn't it follow the provider's category?

A: The CFPB designated the CPL fee as one where the borrower has no choice in the provider and, because they cannot shop for the CPL issuer, it is in the zero tolerance group.

Q: Since an owner's policy is not required by the lender, if it is provided by a settlement agent that is on the CANNOT Shop for written list, does the Owner's policy charge impact the APR?

A: Regardless of who provides the Owners Title insurance policy, the cost is in the unlimited tolerance (variation) group because it is not required by the lender. The cost of the policy is specifically excluded from the calculation of the finance charge which is a component of the APR. (See: 12 CFR § 1026.4(c)(7) - Real Estate Related Fees, item (i) Fees for title examination, abstract of title, title insurance, property survey and similar purposes.)

Other

Settlement Statement

Q: What will happen in a state that requires itemization of fees beyond what the lender disclosed in the Loan Estimate or Closing Disclosure?

A: It is anticipated that those issues will be addressed by the issuance of a separate settlement statement to the buyer/borrower and seller which will itemize state-specific fees, reconcile any disconnect between the title insurance premiums as disclosed and as actually paid, and allow for state-specific recitals and details.

Q: Most settlement agents now plan to issue a settlement statement with TRID impacted transactions; does this present any challenges?

A: A settlement statement will mostly likely need to be issued to reflect accurate accounting for all the funds along with the Closing Disclosure (CD). Many states' statutes require settlement agents to issue settlement statements. Some of the challenges may include what format of the settlement statement should be used. ALTA has released a set of standard settlement statements that could be used and some state land title associations and regulators have

created or are looking into creating a standard format. (http://www.alta.org/cfpb/documents.cfm)

While the Closing Disclosure does replace the HUD-1 settlement statement that was designed by HUD (except as to exempt transactions), it does not prohibit the development of disbursement documents pursuant to contract or other law or custom. The pertinent sections are set forth below.

The summary of the Final Rule begins on page 2. On page 6, the following appears.

> *D. The Closing Disclosure*
> **The Closing Disclosure form replaces the current form used to close a loan, the HUD-1, which was designed by HUD under RESPA**. It also replaces the revised Truth in Lending disclosure designed by the Board under TILA. The rule and the Official Interpretations (on which creditors and other persons can rely) contain detailed instructions as to how each line on the Closing Disclosure form should be completed. **The Closing Disclosure form** contains additional new disclosures required by the Dodd-Frank Act and a **detailed accounting of the settlement transaction.** [Emphasis added]
>
> . . .

The Section-by-Section Analysis of 1026.19(f)(1)(v) *Settlement Agent* starts on page 477 and the following quote is on page 505.

> Some commenters expressed concern that settlement agents could face operational challenges if a creditor prepares the Closing Disclosure in a manner that conflicts with the creditor's closing instructions to the settlement agent. The Closing Disclosure is designed to integrate disclosures provided to consumers under TILA and RESPA to enhance their understanding of the home mortgage loan transaction. **To the extent the Closing Disclosure's disclosure requirements differ from other arrangements made pursuant to contract or other law or custom, the final rule does not prohibit creditors and settlement agents from developing their own disbursement instructions and managing any discrepancies as they arise, consistent with the current practice with respect to the RESPA settlement statement.** [Emphasis added]

The Section-by-Section Analysis of 1026.19(f)(4) *Transactions Involving a Seller* starts on page 584 and the following quote begins with the last paragraph on page 590 and continues on page 591. The last sentence of the excerpt below is identical to the last sentence of the excerpt above.

With respect to commenters' questions about use of the Closing Disclosure as a **disbursement document**, as explained also in the section-by-section analysis of § 1026.19(f)(1)(v), the Closing Disclosure is designed to integrate disclosures provided under TILA and RESPA. **To the extent the Closing Disclosure's disclosure requirements differ from other arrangements made pursuant to contract or other law or custom, the final rule does not prohibit creditors and settlement agents from developing their own disbursement instructions and managing any discrepancies as they arise, consistent with the current practice with respect to the RESPA settlement statement**. [Emphasis added]

Q: Is it allowable under the rule to send the Settlement Statement to the buyer and/or seller with the Closing Disclosure?

A: No. The rule states at § 1026.38(t)(1)(i) (1) *General requirements* that (i) The creditor shall make the disclosures required by this section clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures also shall be grouped together and **segregated from everything else.** [Emphasis added]

The section-by-section analysis of § 1026.38(t)(1)(i) states: 1. *Clear and conspicuous; segregation*. The clear and conspicuous standard requires that the disclosures required by § 1026.38 be legible and in a readily understandable form. The disclosures also must be grouped together and **segregated from everything else.** [Emphasis added]

Q: Today lenders request an estimated HUD-1 from the settlement agent to send along with a subordination request to the existing mortgage holder. After October 3rd, what would a settlement agent issue for a TRID-related transaction?

A: A best practice would be to follow your current process and provide an estimated Settlement Statement to accompany the subordination request. A settlement agent should not send an "estimated" or "draft" Closing Disclosure with a subordination request. The TRID rule does not allow for an "estimated" or "draft" Closing Disclosure.

Q: May we issue a Settlement Statement on properties in Texas?

A: Yes. On October 7, 2015, TLTA issued an FAQ which provided, "if a company chooses for business reasons or upon request by the lender or buyer/seller to use an additional settlement statement form, such as the Texas promulgated buyer/seller forms or the ALTA uniform settlement form, there is no prohibition against that, but it is strictly optional". Dateline: Compliance FAQs: Which Settlement Statement Forms are Required and Which Are Optional With TRID?

Q: What is required of the lender versus settlement agent for issuing the Texas Form T-64?

A: Yes. The procedural rule (P-73, below) promulgated by the Texas Department of Insurance states that it is the "settlement agent" who is to draft the Texas Disclosure (Form T-64) and each part of the rule is specifically directed to the settlement agent. There is no requirement that the lender review the T-64 as it only pertains to the settlement agent.

P-73. Closing Disclosure and Texas Disclosure (Form T-64)

1. When a settlement agent is required to use a federal Closing Disclosure form in a settlement in Texas, the settlement agent must also prepare Form T-64.
2. On Form T-64 (See Form T-64 completed with sample data), the settlement agent must:
    1. accurately disclose the Texas title insurance premiums,
    2. separately itemize all other fees and charges paid to the settlement agent (which may have been combined on the Closing Disclosure), and
    3. disclose all payments of portions of the title insurance premium or real estate commission to third parties.
3. Settlement agents must use Form T-64 with the federal Closing Disclosure, as an acknowledgement and authorization for disbursement.
4. Settlement agents may use a combined Form T-64 for signature by both buyer and seller, or may use a separate Form T-64 for each party.
5. Additional blank lines may be added to Form T-64 as needed to disclose additional items.
6. The last three paragraphs, beginning with "The Closing Disclosure was assembled" and ending with the acknowledgment paragraph, must be kept together on the same page with the signatures.

Q: Does the T-64 also have to be delivered to the borrower one calendar day prior to closing to follow Texas' home equity loan rules?

A: The one calendar day rule comes from the supplemental T-42.1 endorsement, which most lenders require be issued on a home equity loan. Provision 1(I) of that endorsement states that the "final settlement statement . . . itemizing the actual fees, points, interest, costs and charges collected or disbursed" should be given to the property owner "at least one calendar day" prior to closing.

If a home equity loan falls under the provisions of the TRID rules, the settlement statement (CD and perhaps CD + T-64) should be delivered at least 1 day prior to closing. Therefore, if all is delivered without change 3 days prior to closing to the consumer to comply with the 3-business day TRID rule, this should also suffice to comply with Texas' rules in regards to a home equity.

If the loan is not a home equity, there is no deadline for delivery of the T-64, only a requirement that it must be signed and completed. For non home equity loans, most Texas settlement agents are having the T-64 signed and effectively delivered at closing/settlement.

Software Fees

Q: Is a settlement agent a "servicer," as that word is used in section 1026.19(f)(5)? [No fee. No fee may be imposed on any person, as a part of settlement costs or otherwise, by a creditor or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for the preparation or delivery of the disclosures required under paragraph (f)(1)(i) of this section.]

A: The Official Staff Interpretation at 19 (f)(1)(v)-1 says: "A settlement agent may provide the disclosures required under § 1026.19(f)(1)(i) instead of the creditor. By assuming this responsibility, the settlement agent becomes responsible for complying with all of the relevant requirements of § 1026.19(f), meaning that "settlement agent" should be read in the place of "creditor" for all the relevant provisions of § 1026.19(f), except where such a reading would create responsibility for settlement agents under § 1026.19(e)."

If "settlement agent" is substituted for "creditor" in section 1026.19(f)(5), then the settlement agent would not be allowed to charge a fee for the preparation or delivery of the Closing Disclosure.