First American Title™

CFPB-TRID
Frequently Asked Questions
April 29, 2015

Contents

TILA-RESPA Integrated Disclosure Rule

Effective Date(s)

Q: What is the effective date for the new forms?

A: The TILA-RESPA Integrated Disclosure Final Rule applies to covered loans for which the lender or mortgage broker receives a loan application on or after August 1, 2015. (Supplement I to Part 1026 – Official Interpretations – Comment 1(d)(5)-1). Thus we will begin using the new disclosures shortly after August 1, 2015. However, loans for which an application was received before August 1, 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.

Q: Can we use the new forms prior to August 1, 2015?

A: The TILA-RESPA Integrated Disclosure Final Rule Forms (LE & CD) may only be used for loans for which an application was received on or after August 1, 2015

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.

Q: What transaction types are impacted (Cash, HELOCS and Reverse Mortgage)?

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: Am I understanding correctly that this new CFPB Rule will NOT apply to (and so a standard HUD-1 will continue to be used for):Cash sales & Owner Finance loans (provided the seller has not done more than five loans in . . . how long?) Contract for Deed 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. At this juncture I would advise any unlicensed/unregistered lender (who lends money to individuals for personal, family or household use) to get a business specific legal opinion on the matter, not an informal analysis from me. 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. If the loan purpose is business, then no Closing Disclosure is used; 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 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 August 1, 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 not covered by the new Rule for two reasons--if the loan proceeds are not for personal, family or household use, and because the collateral is not improved by a dwelling.

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

Financing Type

Q: What financing types are impacted?

A: 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.
NOTE: for information about seller carryback loans, see Seller Financing/Carryback Loans below.

Seller Financing/Carryback Loans

Q: If seller financing is involved, are we allowed to prepare a note and mortgage for the seller?

A: Please refer the agent to underwriting communication NA-Escrow-2013-003-Standard issued 12/30/13 on AgentNet. This bulletin sets forth the position First American is taking. Agents may wish to do likewise.

Q: As a Title Agent, can we prepare Notes, Mortgages, and Amortization Schedules for seller financing? What if it is listed on our title commitment as a requirement?

A: Preparation of these documents is not prohibited. The concern is that these activities may be viewed as falling within the definition of "loan originator" unless we make it clear that we were not involved in the negotiation of the loan. The use of a disclaimer may be necessary.

Q: If we are handling the transaction with seller financing, do we need to have something signed by the seller (a disclaimer of sorts) that indicates they are aware of the CFPB regulations?

A: The "Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z)" does not require that the seller sign a

disclaimer, but it is likely a settlement agent will want the seller to sign some sort of disclaimer that they are aware of the regulation.

Q: Is the closing agent responsible for enforcing the seller financing rules?
A: No. Enforcement of the Seller Financing rules will be with the agency/bureau responsible for compliance with the Truth in Lending Act. For most, that will be the Consumer Finance Protection Bureau, but for some it may also be the state Banking Department, depending on their legislative mandate.

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.

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.

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.

Q: How will private financing (Hard money lenders) be handled? Are those individuals whom lend money to investors affected by the new Closing Disclosures and do they fall under the new lending rules? Most do lend more than 5 loans per year.

A: 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. If in fact the lending is only done to investor purchaser/borrowers such that the loan proceeds are not for personal, family or household use, then the loan transaction is outside of Truth in Lending, but I would advise them to get a legal opinion on the matter, not an informal analysis from me. 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.

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).

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 LE or CD?

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 be identified on the forms.

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 they 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.

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.

Loan Estimate

Effective Date(s)

Q: When does the new Loan Estimate go into effect?

A: The Final Rule applies to covered loans for which the lender or mortgage broker receives a loan application on or after August 1, 2015. (Supplement I to Part 1026 – Official Interpretations – Comment 1(d)(5)-1

3 Day Disclosure/Delivery Requirements

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. (*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.

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 Bus 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 a 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

Financial Emergency

Q: What constitutes a financial emergency?

A: Certain waiting periods may be waived by the consumer when there is a bona fide personal financial emergency, including the requirement that the Closing Disclosure be delivered 3 days prior to consummation. (*See:* 12 CFR § 1026.19(f)(1)(iv).) There are very few actual examples in federal rulemaking or case law interpreting the meaning of a bona fide personal financial emergency. 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).

Issuance

Q: Can a Lender issue multiple LE's on different loan products concurrently to the same consumer?

A: Yes, in fact that is what the CFPB is hoping will happen.

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).

Owner's Title Insurance

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.

Closing Disclosure

Effective Date(s)

Q: What is the effective date for the new forms?

A: The TILA-RESPA Integrated Disclosure applies to covered loans for which the lender or mortgage broker receives a loan application on or after August 1, 2015. (Supplement I to Part 1026 – Official Interpretations – Comment 1(d)(5)-1). Thus we will begin using the new disclosures shortly after August 1, 2015. However, loans for which an application was received before August 1, 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.

3 Day Disclosure/Delivery Requirements

Q: If the HOA demand letter changes, will the closing disclosure have to be changed and then wait another 3 days?

A: No. There are only 3 events that will trigger a new 3 business day waiting period: 1) a change in the annual percentage rate by more than 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: Nowadays, most documents are distributed via email. If a borrower receives the closing disclosure by email and signs and returns via email, does my 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. This is a very complex topic and there are many questions that still need to be

answered. We will be receiving more information as time passes and will share that, but here is what we know now:

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 19(f)(1)(iii)-1. For example, if a creditor sends a disclosure required under § 1026.19(f) via email on Monday, pursuant to § 026.19(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).

Examples:
Mail Delivery

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Refinances

Even with 3 days advance disclosure before closing (consummation), the 3 day rescission period still applies in refinance of principal residence:

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
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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.

Owner's Title Insurance

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: 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: Under the new rule will it still be possible to order title before the lender is identified? If yes, how would do this and still maintain the integrity of the Loan Estimate?

A: Yes – If you show an amount on the LE and it is not shown on the CD then you would assume for tolerance proposes that it was not shown on the LE. For example: Show the Owner's policy on the LE at $450 but it is opted out on the CD – for the purposes of calculating tolerances assume LE showed $0 and the CD showed $0. Reference is 19(e)(3)(ii)-5

Owner's Policy Optional

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.)

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.

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.

Financial Emergency

Q: Will 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"
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> 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).

Responsibility

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).

Distribution

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.

Variations

Q: Are there instances in which Title Insurance or Closing Fees can be listed in the charges that cannot change?

A: Yes. For example, Title – Lender's Title Policy or Title – Settlement Agent Fee could fall under Loan Costs Section B. "Services Borrower Did Not Shop For" if the Lender selected the service provider or if the borrower chooses to use the service provider from the Lender's list.

Q: If a customer named a settlement agent to perform the closing on their purchase contract, would it impact where the Settlement Agents 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.

Settlement/Closing Statement

Q: Are there any States that require the issuance of the Settlement Statement?
A: Yes.

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 is expected to release a standard settlement statement that could be used and many local state LTAs are looking into creating a standard format. Another challenge is having to produce an additional document that will need to be explained to the consumer.

TRID Preamble Pg. 505
Some commenters expressed concern that settlement agents could face operational challenges if a creditor prepares the Closing Disclosure (CD) 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.

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RESPA settlement statement.

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.

Section E Taxes and Other Government Fees

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.

Section B Charges

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).

Corrected CD

Q: What happens if an error is found more than 30 days after consummation?
A: The Rule limits the responsibility to errors found within 30 days of consummation. Therefore, any 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.

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: Is the creditor required to inform the settlement agent if it issued a corrected Closing Disclosure?
A: The creditor is only required to re-issue to the consumer

Q: Does a non-borrower who holds title (and will be signing the security instrument only) need to receive a CD?

A: Yes if it is a transaction that has a rescission period ('refinance'). The Closing Disclosure must be given to all consumers who have an ownership interest and therefore the right to rescind.

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.

Other

Support and Training

Q: Will First American Title Insurance Company provide more in-depth training before the new rule goes in effect?

A: Yes. As new information is known, First American will email applicable memorandums and links to register for webinar updates.

Q: Will we have to obtain new closing program software to meet the requirements of the new Closing Disclosure, etc.?

A: Yes. Software is being rewritten to accommodate the new Closing Disclosure and all settlement agents will require training prior to August 1, 2015. The settlement agent may be liable for penalties pursuant to the Section 1055(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 5565(c)) which 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.

Actual vs. Averaging

Q: Does First American use averaging for recording fees?

A: Actual recording fees must be charged by First American pursuant to Corporate Underwriting Communication NA-Escrow-2014-002-Standard entitled: "General Standard to Disclose Actual Charges and the Recording and Transfer Tax Charge and Refund Standard"