

TRID Frequently Asked Questions

Parrish Fortenberry,

Executive Vice President and Secretary, Mississippi Valley Title Services Company
Vice President, Old Republic National Title Insurance Company
Title Counsel



TRID Update

TRID Update

- January 2016: CFPB issued Construction Loan Factsheet
 - Provides an overview about disclosing construction loans under TRID.
- February 2016: CFPB issued a new rule in the Federal Register (81 FR 7032) to clarify that the following are NOT subject to Tolerances under TRID:
 - Property insurance premiums;
 - Property taxes;
 - Homeowner's association dues;
 - Condominium fees; and
 - Cooperative Fees.

Disputes with the Lender Over Interpretation of TRID

Disputes with the Lender Over Interpretation of TRID

Q: What do I do if I disagree with the Lender over interpretation of TRID?

- In 2010, HUD advised use of a 3 step approach to handle disputes between the Settlement Agent and Lender over interpretation of the new RESPA Reform rule:
 - Explain to the Lender why you feel the Lender's interpretation of the Rule is incorrect.
 - If the Lender still disagrees with your interpretation, request the Lender's contrary instructions in writing.
 - Follow the Lender's instructions so long as fraud is not involved.
- CFPB has not given any official guidance on how to handle disputes between the Settlement Agent and Lender over interpretation of the new TRID rule.

Transactions Subject to TRID

Transactions Subject to TRID

Q: What transactions are covered by TRID?

- Loans made:
 - To natural persons (including some estate planning trusts),
 - Primarily for personal, family, or household purposes, and
 - Secured by real property.

Transactions Subject to TRID

Q: What transactions are NOT covered by TRID?

- Cash sales.
- Loans to Corporations and LLCs.
- Loans made primarily for business, commercial, or agricultural purposes.
- Home-equity lines of credit.
- Reverse Mortgages.
- Mortgages secured by a mobile home or dwelling not attached to land.
- No-interest second mortgages made for down payment assistance, energy efficiency, or foreclosure avoidance.
- Loans made by a creditor who makes five or fewer mortgages in a year (unless more than one (1) within any 12-month period is a high-cost mortgage subject to 1026.32).

Preparation and Delivery of the Closing Disclosure

Preparation and Delivery of the Closing Disclosure

Q: Who prepares and delivers the Closing Disclosure for the Borrower?

- Under TRID, the Lender is required to provide the Closing Disclosure to the Borrower.
 - However, the Lender can allow the Settlement Agent to provide it.

Q: Who prepares and delivers the Closing Disclosure for the Seller?

- Under TRID, the Settlement Agent is required to provide the Closing Disclosure to the Seller.
- The Settlement Agent is required to provide the Lender with a copy of the disclosure provided to the Seller if the Seller and Borrower are provided separate disclosure documents.
 - Potential privacy concerns.



Timing of Delivery and 3 Day Review Period

Timing of Delivery and 3 Day Review Period

Q: When is the Borrower required to receive the Closing Disclosure?

- The Borrower must receive the Closing Disclosure no later than three (3) Business Days before Consummation.
 - “Business Day” means all calendar days except Sundays and the 10 federal holidays specified in 5 USC 6103(a).
 - If not hand delivered, add three (3) additional days for mailing.
- Typically, this means the Closing Disclosure must be sent at least 7 calendar days before closing.

Q: When is the Seller required to receive the Closing Disclosure?

- The Seller must receive the Closing Disclosure no later than the day of closing.



Changes to the Closing Disclosure

Changes to the Closing Disclosure

Q: Once the Closing Disclosure is delivered to the Borrower, can it be changed?

- Yes.

Q: When is the Borrower required to receive the revised Closing Disclosure?

- The Borrower must be provided a revised Closing Disclosure and given a new 3 Day Review Period only if:
 - A pre-payment penalty is added to the loan;
 - The loan product changes; or
 - The APR increases beyond an allowable limit.
- For any other changes, the Borrower must receive the revised Closing Disclosure at or before consummation.



Privacy Rules

Privacy Rules

Q: Does TRID limit who may be provided a copy of the Closing Disclosure or who may be present at the closing?

- No.

Q: What are the sources of the rules regarding privacy?

- Federal Law: Primarily the Graham-Leach-Bliley Act of 1999
 - GLB Act is administered by the Federal Trade Commission.
- State Law
- Contract Law: Lender's Closing Instructions
 - Remember: Lender Closing Instructions may be more restrictive. Even if allowed under the GLB Act, the Lender's Closing Instructions may prohibit providing copies of forms to third parties.



Privacy Rules

Graham-Leach-Bliley Act of 1999

Q: Who is covered by the Privacy Rule of the GLB Act?

- The Privacy Rule applies to “Financial Institutions”.
- “Financial Institutions” term includes providers of real estate settlement services.

Q: What information is covered by the Privacy Rule?

- The Privacy Rule covers a consumer’s “nonpublic personal information” (NPI).
- NPI is any “personally identifiable financial information” that a “financial institution” collects about an individual in connection with providing a product or service, unless that information is otherwise “publicly available”.

Privacy Rules

Graham-Leach-Bliley Act of 1999

NPI is:

- any information an individual gives you to get a financial product or service (for example, name, address, income, Social Security number, or other information on an application);
- any information you get about an individual from a transaction involving your financial product(s) or service(s) (for example, the fact that an individual is your consumer or customer, account numbers, payment history, loan or deposit balances, and credit or debit card purchases); or
- any information you get about an individual in connection with providing a financial product or service (for example, information from court records or from a consumer report).

Source: “How To Comply with the Privacy of Consumer Financial Information Rule of the Gramm-Leach-Bliley Act”, Federal Trade Commission, dated July 2002



Privacy Rules

Graham-Leach-Bliley Act of 1999

Q: What is required by the Privacy Rule?

- “Financial Institutions” must provide privacy notices as set out in the Rule.
- If any NPI is shared with nonaffiliated third parties, the consumer must be provided an “opt-out” notice, and given a “reasonable opportunity” to opt-out before that information is shared.
 - The Privacy Rule contains an exception to the Notice and Opt-Out Requirements when the information-sharing is necessary for providing the product or service requested by the consumer.

Closing Disclosure vs. ALTA Settlement Statement

Closing Disclosure vs. ALTA Settlement Statement

Q: Is the ALTA Settlement Statement required by TRID?

- No.

Q: Why did ALTA create the ALTA Settlement Statement?

- It is a settlement form that can be shared with other parties (although there are privacy concerns).
- It can be used to provide additional information about the transaction, such as to itemize recording fees beyond the Deed and Deed of Trust or explain Simultaneous Title Insurance fees.
- It provides a form which can be signed by the Borrower and Seller to approve the numbers and authorize disbursement.

Q: Is the Settlement Agent required to prepare an ALTA Settlement Statement?

- No, unless required by the Lender in its Closing Instructions.



Closing Disclosure vs. ALTA Settlement Statement

Q: Can an ALTA Settlement Statement be issued instead of the Closing Disclosure?

- No. The Closing Disclosure form must be provided.

Completing the Closing Disclosure

Completing the Closing Disclosure

Simultaneous Title Insurance

Q: How do I show simultaneously issued policies on the Closing Disclosure?

- Loan Policy Premium: In Section B or C (as applicable), show the full loan policy premium.
- Owner's Policy Premium: In Section H, show the amount calculated as follows:
 - Full Owner's Policy Premium,
 - Plus Simultaneous Fee,
 - Minus the Loan Policy Premium shown in Section B or C.

Completing the Closing Disclosure

Simultaneous Title Insurance

Premium Calculator

State: Loan Policy Amount :

Owner's Policy Amount :

Reissue Amount :

Lender's Premiums		Owner's Premiums	
Standard Loan or Short Form :	\$300.00	Standard Owner's :	\$350.00
Expanded Coverage Mortgagee:	\$330.00	Homeowner's :	\$400.00

Simultaneous Issue Premiums

	Lender's Premium	Additional Premium for Owner's	Total Premium
Standard Loan or Short Form AND Standard Owner's :	\$300.00	\$100.00	\$400.00
Standard Loan or Short Form AND Homeowner's :	\$300.00	\$150.00	\$450.00
Expanded Coverage Loan AND Standard Owner's :	\$330.00	\$70.00	\$400.00
Expanded Coverage Loan AND Homeowner's :	\$330.00	\$120.00	\$450.00

Loan Policy Premium
In Section B or C

Owner's Policy Premium
In Section H

Completing the Closing Disclosure

Simultaneous Title Insurance

Page 2 of Closing Disclosure

Loan Costs	Borrower-Paid		Seller-Paid		Paid by
	At Closing	Before Closing	At Closing	Before Closing	Others
C. Services Borrower Did Shop For	\$300.00				
01 Title - Lender's Title Insurance to Title Agent Company	\$300.00				

Other Costs	Borrower-Paid		Seller-Paid		Paid by
H. Other	At Closing	Before Closing	At Closing	Before Closing	Others
H. Other	\$100.00				
01 Title - Owner's Title Insurance (Optional) to Title Agent Company	\$100.00				



Completing the Closing Disclosure

Simultaneous Title Insurance

Page 2 of Closing Disclosure

Loan Costs	Borrower-Paid		Seller-Paid		Paid by
	At Closing	Before Closing	At Closing	Before Closing	Others
C. Services Borrower Did Shop For	\$300.00				
01 Title - Lender's Title Insurance to Title Agent Company	\$300.00				

Other Costs	Borrower-Paid		Seller-Paid		Paid by
	At Closing	Before Closing	At Closing	Before Closing	Others
H. Other	\$100.00				
01 Title - Owner's Title Insurance (Optional) to Title Agent Company	\$100.00				

	TRID	Actual
Loan Policy	300.00	50.00
Owner's Policy	100.00	350.00



Completing the Closing Disclosure

Simultaneous Title Insurance

Q: What if the Seller is paying for the Owner's Policy and the Borrower is paying for the Loan Policy?

Page 2 of the Closing Disclosure

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	

C. Services Borrower Did Shop For	\$300.00				
01 Title - Lender's Title Insurance to Title Agent Company	\$300.00				

+ Other Costs

H. Other					
01 Title - Owner's Title Insurance to Title Agent Company			\$100.00		



Completing the Closing Disclosure

Simultaneous Title Insurance

Q: What if the Seller is paying for the Owner's Policy and the Borrower is paying for the Loan Policy?

Page 2 of the Closing Disclosure

Loan Costs	Borrower-Paid		Seller-Paid		Paid by
	At Closing	Before Closing	At Closing	Before Closing	Others
C. Services Borrower Did Shop For	\$300.00				
01 Title - Lender's Title Insurance to Title Agent Company	\$300.00				

Other Costs					
H. Other					
01 Title - Owner's Title Insurance to Title Agent Company			\$100.00		

	TRID	Actual	Over (Under)
Borrower	300.00	50.00	250.00
Seller	100.00	350.00	(250.00)



Completing the Closing Disclosure

Simultaneous Title Insurance

- The CFPB suggested 3 ways to adjust in the May 26, 2015 webinar:
 - First, the remaining credit could be applied toward any other title insurance cost, including the lender's title insurance cost;
 - Second, the remaining credit could be considered a general seller credit and disclosed as such on the Summaries of Transactions table on Page 3; or
 - Third, the remaining credit could be specified as a credit for the owner's title insurance cost and disclosed as such on the Summaries of Transactions table on Page 3.
 - ALTA preferred method.
- Discuss with the Lender how the Lender wants it to be disclosed.

Completing the Closing Disclosure

Simultaneous Title Insurance

Illustration of Third Option

Page 3 of Closing Disclosure

Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION		SELLER'S TRANSACTION	
L. Paid Already by or on Behalf of Borrower at Closing	\$250.00	N. Due from Seller at Closing	\$350.00
01 Deposit		01 Excess Deposit	
02 Loan Amount		02 Closing Costs Paid at Closing (J)	\$100.00
03 Existing Loan(s) Assumed or Taken Subject to		03 Existing Loan(s) Assumed or Taken Subject to	
04		04 Payoff of First Mortgage Loan	
05		05 Payoff of Second Mortgage Loan	
Other Credits		06 Title Insurance Premium Correction	\$250.00
06		07	
07		08	
Adjustments		09	
08 Title Insurance Premium Correction	\$250.00	10	
09		11	
10		12	
11		13	



Completing the Closing Disclosure

Simultaneous Title Insurance

ALTA Settlement Statement

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		Title Charges & Escrow / Settlement Charges		
		Loan Policy of Title Insurance (\$ 300.00) to Title Agent Company	\$50.00	
\$350.00		Owner's Title Insurance (\$ 100.00) to Title Agent Company		



Completing the Closing Disclosure

Earnest Money Held by Realtors

Q: The Realtor is holding the Earnest Money for the transaction. How do I disclose this on the Closing Disclosure?

- Disclose the full realtor's commission in Section H on Page 2.

Other Costs

H. Other					
01	Real Estate Commission	to Realtors Inc.			\$6,000.00

- Disclose the Earnest Money Deposit on line L.01 on Page 3.
 - There is no place to specifically show the money is held by the Realtor.

Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION		SELLER'S TRANSACTION	
L. Paid Already by or on Behalf of Borrower at Closing \$1,000.00		N. Due from Seller at Closing \$0.00	
01	Deposit \$1,000.00	01	Excess Deposit
02	Loan Amount	02	Closing Costs Paid at Closing (J)
03	Existing Loan(s) Assumed or Taken Subject to	03	Existing Loan(s) Assumed or Taken Subject to
04		04	Payoff of First Mortgage Loan
05		05	Payoff of Second Mortgage Loan



Completing the Closing Disclosure

Escrows for Post-Closing Items

Q: Seller has agreed to escrow money after closing to pay for a repair to the property. How is this disclosed on the Closing Disclosure?

- This will be shown in Section N on Page 3.

Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION		SELLER'S TRANSACTION	
L. Paid Already by or on Behalf of Borrower at Closing	\$0.00	N. Due from Seller at Closing	\$3,000.00
01 Deposit		01 Excess Deposit	
02 Loan Amount		02 Closing Costs Paid at Closing (J)	
03 Existing Loan(s) Assumed or Taken Subject to		03 Existing Loan(s) Assumed or Taken Subject to	
04		04 Payoff of First Mortgage Loan	
05		05 Payoff of Second Mortgage Loan	
Other Credits		06 Escrow Holdback Repairs	\$3,000.00
06		07	

Q: When the escrow is disbursed after closing, are we required to issue a revised Closing Disclosure?

- Subsequent disclosure of the actual amount of the post-closing items to be paid from closing funds is optional. *Comment 1026.38(k)(2)viii-3.*



Completing the Closing Disclosure

Miscellaneous Questions

Q: How are seller credits disclosed on the Closing Disclosure?

- Seller credits for a specific item are shown on that particular line on Page 2.
- Lump sum credits from the Seller which are not attributable to a specific item are shown as a lump sum credit on Page 3.

Q: Where are survey fees disclosed on the Closing Disclosure?

- If the lender requires a survey, then the survey fees will be disclosed in Section B or C (as applicable).
- If the lender does NOT require a survey, then the survey fee will be disclosed in Section H.

Q: Are closing/settlement fees required to be itemized or can we continue to use the roll-up method?

- Fees are required to be Itemized.

Completing the Closing Disclosure

Miscellaneous Questions

Q: Does TRID require certain descriptions be used for fees listed on the Closing Disclosure?

- Fee names between the Loan Estimate and the Closing Disclosure should be the same.
- All fees, other than certain ones required by TRID, are to be ordered alphabetically.
- Closing and title insurance fee descriptions start with “Title –”.
- Add “(Optional)” at the end of the label for the Owner’s Title Insurance Policy premium if the Borrower is paying.



TRID Frequently Asked Questions