TRIDBITS

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Old Republic Title's TRIDBITS

Volume 1

Do you know what determines whether the Closing Disclosure (CD) form is delivered three days in advance?

The lender is responsible for the delivery of the CD but the Rule allows the lender to designate another party to handle the delivery. Because the requirement is so strictly defined and the penalties so severe, it is believed most lenders will make the delivery and not allow another party to deliver. We, as the closing industry, are not responsible to "police" the delivery but need to be cautious if we hear something contrary to the Rule. With regard to the specifics of calculating the three-day advance disclosure requirement, the definition of business day comes into play. If the CD is not hand-delivered to the consumer (or delivered in a manner that affirmatively confirms delivery by the consumer) then an additional three days are added to the time period. This is the case even if the document is sent electronically.

The definition of a "business day," as it applies to the delivery of the CD, differs from the definition used for the delivery of the Loan Estimate (LE). A business day for CD purposes is all calendar days other than Sundays and the ten Federal holidays. Therefore, Sundays and the ten federal holidays must be removed from the count. If you do not hand-deliver the CD, the time period will most typically expand to seven days in advance of the closing (three days in transit, three days for review plus one Sunday or federal holiday when applicable).

What are the three charges that would cause a triggering of the new three-day review period?

After the delivery of the Closing Disclosure (CD) and prior to consummation the three instances UNDER THIS RULE where a new three-day review period is required are:

1) If a pre-payment penalty is added,

2) If the loan product changes, or

3) If the APR becomes inaccurate.

Other changes are allowed without retriggering the three-day review period. However, if the change requested affects the value of the property causing the lender to require a revised appraisal, the Equal Credit Opportunity Act (ECOA) may cause a delay because the ECOA requires the delivery of the final appraisal three days prior to consummation.

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

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

What constitutes consummation on a loan with a three-day right to cancel: is it at the signing or after the expiration of the rescission period? Consummation is defined as the day the borrower becomes obligated to the debt. Therefore, typically it is the day the promissory note is signed or in accordance with your state's definition of "obligated."

A CFPB staff member put it simply saying consummation is the day of signing not at the end of rescission, "Because you can't rescind what you haven't accepted."

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

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One of the triggers for a new three-day review period is if the APR becomes inaccurate between the time the Closing Disclosure (CD) is delivered and consummation. What if the APR decreases?

The Rule states that if the APR becomes "inaccurate" and the change is outside the 1/4 and 1/8 percent tolerance, the review period must be restarted. The Rule does not say if the APR increases, rather it says "becomes inaccurate." A decrease in the APR of either 1/4 or 1/8 percentage point renders the quoted APR inaccurate. We deal with this same provision today.

Will we see the use of the new forms prior to the August 1 implementation date?

No, the Rule does not permit the use of the new forms for any loans where the loan application was taken prior to August 1, 2015. In reality, the title and closing industry may not see the new Closing Disclosure (CD) until well into fall by the time those loans get to consummation. Continue to use the HUD-1 for settlements on loans in which the loan application was taken prior to August 1, 2015.

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

It depends. If the lender is inputting the numbers onto the CD and uses the combined buyer-seller form, you will need to ask them to make any and all changes or get permission from them to make changes.
Most lenders have indicated that they will be delivering only the borrower's side of the CD and will rely solely on the closing/settlement industry to provide the seller's CD. The Rule specifically tasked the closing/settlement industry with the responsibility of preparing and delivering the seller's side, so if the lender is inputting the numbers but uses the buyer-only form, this will allow you to create and use the seller-only form, leaving you the opportunity to make the changes instantaneously. However, most lenders will require you to obtain their authorization prior to making any changes to the seller's side of the CD. Be sure to talk to your lender(s) about this.

If we prepare and deliver the seller-only CD, we are required to supply the lender with a copy of the seller-only form. There is no delivery requirement regarding the seller's portion of the CD or the seller-only form prior to consummation. The TRID Rule states that the delivery of the seller's side must be made at the time of consummation.

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

The loan title fees will appear in either Section B or C depending on the circumstances*; however, roll-ups are not used on the Closing Disclosure (CD), only itemization. Therefore, endorsements will each appear on separate lines and will be listed starting with "Title -" and then a description of the endorsement. Remember, all fees will be shown in each section in alphabetical order.

** Loan title fees will be shown in Section B if the consumer is given the option to shop for title and they choose a title provider that is on the lender's "Provider List" or if the provider is an affiliate (under the definition of affiliate) of the lender or mortgage broker. Loan title fees will appear in Section C if the consumer is permitted to shop and the chosen provider is not listed on the lender provider list (or is not an affiliate of the lender or mortgage broker).*

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

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

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

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

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

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

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

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

No, it is not an attempt to correct the inaccurate way the CFPB requires title insurance premiums to be calculated. The CFPB has not confirmed the reason a rebate is shown in the sample CD, although it could be a way for the CFPB to illustrate the Butler Rebate in Florida. Florida allows the consumer to negotiate the agent's portion of the title premium and if there is a "rebate," it may be shown as a rebate on the HUD-1.

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

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

The reduction of fees under the TRID Rule creates two issues. First, if the fee is included in either the zero tolerance bucket or the 10% tolerance bucket, a reduction does not cause a tolerance violation but if the fee was used in the calculation of the APR, a reduction may cause the APR to become inaccurate beyond the 1/8 or 1/4 of a percent threshold. This would create the second issue and could trigger a new three-day review period. The Rule states if the APR becomes "inaccurate" (either increases or decreases) by 1/8 or 1/4 percentage point (depending on the product) a new CD is required and a new three-day review period is triggered.

There is now conflicting information out of the CFPB that a decrease in the APR may not trigger a new three-day review period. The wording in the Rule itself states that it will; however, a Fact Sheet published by the CFPB states that it will not. We will make any adjustments to this comment on ORT's FAQ document on the StarsLink Site as soon as possible.

Questions? Contact TRID@oldrepublictitle.com.

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How do I handle the situation if the consumer states that they never received the Closing Disclosure (CD)?
Simply call the lender and tell them the consumer states that they did not receive the CD in advance and then inquire if the lender would like you to proceed. Remember, if the lender used the "mail-box method" of delivery (either mailing or emailing the CD seven days in advance), there is a presumption in the Rule that the consumer received the CD without requiring proof of receipt. Therefore, it is entirely possible that the lender met its obligation but the CD got lost in the mail/email.

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

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

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

Questions? Contact **TRID@oldrepublictitle.com.**

TRIDBITS Volume 6 purposely omitted – addressed date change from August 1, 2015 to October 3, 2015

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FHA Publishes FAQ on Allowable Changes to Settlement Agent Certification Due to TRID
The Federal Housing Administration (FHA) recently published new FAQs in its Single-Family Handbook. Question 374 addresses allowable changes settlement agents can make to the new settlement agent certification which replaces the current addendum to the HUD-1. FHA released its new certification earlier this summer, stating:

To the best of my knowledge, the Closing Disclosure **which I have prepared** *is a true and accurate account of the funds which were (i) received, or (ii) paid outside closing, and the funds received have been or will be disbursed by the undersigned as part of the settlement of this transaction. I further certify that I have obtained the above certifications which were executed by the borrower(s) and seller(s) as indicated.* (Emphasis added.)

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

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

This is the FHA's only guidance at this time, as it has not revised the certification, nor clarified the instructions on the certification itself. Old Republic Title will continue to keep you updated on any further developments, as this will be part of any training for agents, closers, loan processors, and others involved.

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CFPB TRID Rule Implementation Date Finalized: October 3, 2015
On July 21, the Consumer Financial Protection Bureau (CFPB) released its Final Rule regarding the delayed implementation date. The TILA-RESPA Integrated Disclosure (TRID) Rule will take effect on **October 3, 2015**.

Summary
In addition to finalizing the implementation date, the CFPB made technical corrections to two provisions. The Final Rule is amended so that the Calculating Cash to Close table on the Closing Disclosure (CD) accurately reflects the total amount of cash or other funds the consumer must provide at closing or consummation. The CFPB feels this will facilitate the alignment of the disclosure of Adjustments and Other Credits between the CD and the Loan Estimate (LE). The Final Rule also includes an amendment regarding the requirement for creditors to disclose the basis for any difference between the Adjustments and Other Credits disclosed on the LE to the Adjustments and Other Credits disclosed as "Final" on the CD (only exception is rounding).

In its Final Rule, the Bureau said it received feedback on a number of issues outside the scope of rulemaking and did not address those comments. The CFPB explained why it decided to keep the October 3, 2015 implementation date vs. changing to later in the year, citing it would "impose unnecessary costs on both those segments of industry that have worked hardest to implement on time and on consumers and would be inconsistent with the underlying intent to aid consumer understanding of mortgage loan transactions."

The CFPB further explained in the Final Rule that a Saturday effective date ""may allow for smoother implementation by affording industry time over the weekend to launch new systems configurations and to test systems. A Saturday launch is also consistent with existing industry plans tied to the Saturday August 1 effective date."

Relaxed Enforcement Not Addressed
A grace period or relaxed enforcement was not addressed in the Final Rule; however, Director Cordray provided more clarity regarding the "sensitivity" that the CFPB will give lenders for several months on TRID compliance in his recent semi-annual report to the Senate Banking Committee, when he noted that early examinations of the rule "will be diagnostic and corrective," and that "if we see errors, we will point out what they are and how they should be corrected. We will not be looking to be punitive to people."

What Does This Mean?
Stay the course! Continue to develop and execute on a plan including:

- be a true partner in change,
- communicate not only with your staff but with your business partners about your level of preparedness, questions you may have for your lender(s), real estate agent(s) and others in the transaction, and
- help find ways in which you can all work through any process or transactional issues that may arise will all be instrumental in achieving success through this change.

With 8 weeks until October 3 – TRID should occupy some part in each one of those days. Continue to educate, communicate, influence, market and prepare your operation to be ready for October 3, 2015! Old Republic Title is here to help! Logon to StarsLink, then go to Education & Marketing, then click on the CFPB section to learn more.

Questions? Contact TRID@oldrepublictitle.com.

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Data Exchange
With the TILA-RESPA Integrated Disclosure (TRID) Rule comes a greater need for communication and exchange of information. Old Republic Title wants to make sure you're not only prepared for the changes ahead but that you're equipped to engage in discussions on this topic. It's important to be knowledgeable and conversant about the various means of communication as well as the terminology so that you can have conversations with your lenders and other partners in the transaction. Settlement agents will likely have to connect to multiple portals depending on specific lender requirements.

Options for Data Exchange
1) Third-Party Integrations: e.g. RealEC Closing Insight. Many large lenders are requiring integration with these types of platforms; however, 40% of lenders say they are not yet prepared for implementation and exchange of data is a big reason why.
2) Portals: The user will log into websitename and key their portion of information (or data) to produce a collaborative Closing Disclosure (CD). Agents and lenders can participate in multiple portals and even host their own portal.
3) Manual Entry: Similar to the current process, the settlement agent and the lender each enter the information into their respective systems then send out the form(s) via emails, fax etc. You may want to consider having an encryption system in place.

Electronic Collaboration Milestones
- When key milestones occur on the manual side, there may be outreach/customer contact to help with the overall process.

1) Order start
2) Search completion
3) Exchange of information

Seller-Only Disclosure
- Settlement agents continue to be responsible for the seller's side; therefore, the data exchange between settlement agents and lenders needs to be two-way.

- Seller- paid Owner's Title Insurance and adjustments that need to be made in both the settlement systems and the lender's Loan Origination System (LOS). The inaccuracies of the disclosure of the title premiums on the Loan Estimate (LE) and on page two of the CD will need to be adjusted with either an allocation of the Lender's Title Insurance Policy premium between the buyer and seller columns or debits and credits on Page 3. Creditors will need to be informed as early as possible about the financial responsibilities of the consumer and seller.

Separate Settlement Statements
- The ALTA Settlement Statement (ALTA SS) and other similarly formatted closing/settlement statements serve as a disbursement worksheet and have been embraced by many lenders. The ALTA SS will:

- Include signature lines for the borrower and seller which will serve to acknowledge their approval of the figures and to authorize disbursement,

- Allow for the accurate disclosure of the title insurance premiums to the party or parties responsible, in accordance with state or underwriter filings and any contractual agreements,

- Allow for the itemization of recording fees for all documents being recorded,

- Allow the settlement agent(s) and the title companies to distribute copies to the appropriate third parties involved in the transaction, and

- Eliminate the non-public personal information (NPPI) contained in the CD.

• The ALTA SS and other closing/settlement statements do NOT replace the need for the CD; rather, it should be used in addition to and in concert with the CD. Creditors will require that the borrower's and seller's bottom lines on the ALTA SS or other closing/settlement statements match the bottom lines of the CD and may require a copy for approval prior to consummation.

Other Considerations

• Not all loans will be subject to the new forms. From a systems standpoint, both the current forms (GFE and HUD-1) and the new forms (LE and CD) will be maintained and used and settlement systems should be prepared for this.

• Many lenders have added a new component to require new levels of security, data privacy and assessment under ALTA's Best Practices or other compliance requirements. New and more robust security and privacy requirements should be expected from lenders.

• The third party portal model also handles security, privacy and evidence of compliance.

Training

• Training and change management are very important considerations. Mastery of the CD is critical to move ahead with the training on the various systems. It will also be key to stay in tune with what's happening (i.e. what your lender partners want, etc.).

Glossary

Below is a Glossary to help you become fluent in the language of technological communication.

ALTA SS	ALTA Settlement Statement
CD	Closing Disclosure
LE	Loan Estimate
LOS	Loan Origination System
NPPI	Non-public Personal Information
TPS	Title Production Software

Questions? Contact TRID@oldrepublictitle.com.

Is the charge for an Owner's Title Insurance Policy from an affiliated provider subject to tolerance category?
The Rule contains conflicting information; first, the misleading part of the Rule is found in the preamble at pages 364-365 which states: "With respect to the question whether proposed § 1026.19(e)(3)(iii) would have included fees paid to lender affiliates for an optional settlement service, charges for third-party services not required by the creditor (other than owner's title insurance) are not subject to a tolerance category, even if a lender affiliate provides them." [Emphasis added.]

However, an attorney from the CFPB shared that minute 32 of the August 26, 2014 webinar addressed the question directly. The webinar can be heard by visiting the CFPB website: https://consumercomplianceoutlook.org/outlook-live/2014/FAQ-on-TILA-RESPA-Integrated-Disclosures-Rule/.

During the webinar, the presenter is asked the question about whether or not the Owner's Title Insurance Premium is subject to any tolerance categories, then answered with a qualified "no" and went on to include that his answer also reflected the Rule's direction "even if it is paid to an affiliate of the creditor." The qualification in his answer included:

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

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

How do we fix the problem with the inaccurate disclosure of the title premiums?
Because the numbers must be adjusted to reflect accurate charges to the buyer and seller the CFPB suggested three ways to fix the problem.

The first solution may cause additional problems. The CFPB suggested "[t]he remaining credit could be applied to any other title insurance cost, including the lender's title insurance cost (See § 1026.38(f)&(g))" However, changing the lender's title insurance policy cost more likely will affect the APR and if the adjustment is significant enough it may cause a triggering of a new three-day review period.

The second solution may also cause a problem. "The remaining credit can be considered to be a general seller credit and disclosed as such in the Summaries of Transactions table on page 3 of the Closing Disclosure. (See § 1026.38(k)(2)(vii))" A general seller credit may trigger a Qualified

Mortgage (QM) disqualification which will remove the safe harbor protection for the lender. You and the lender will have to determine how the credit should be labeled in light of the QM Rule so as not to create a problem for the lender in the event this alternative is used. Have the conversation now.

The third suggestion, if carefully worded may be the only workable solution. “Use of a credit specifying the remaining amount for the owner’s title insurance cost in the Summaries of Transactions table on page 3 of the Closing Disclosure. (See § 1026.38(k)(2)(viii)). This credit could be disclosed as a “simultaneous issue credit” in the Summaries of Transactions.” Determining which alternative will require a discussion with your lender.

Consider using the ALTA Settlement Statement in addition to the CD where you can accurately disclose the title premiums.

Questions? Contact TRID@oldrepublictitle.com.

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QUESTION: What are the procedures when something changes after closing?
If a fee to the consumer becomes inaccurate within 30 days of consummation and that inaccuracy results in a change to the amount actually paid by the consumer the Creditor must deliver or place in the mail a revised CD within 30 days of knowledge of the inaccuracy.

If a clerical non-numeric error is discovered the Creditor must deliver or place in the mail a revised CD within 60 days after consummation.

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

QUESTION: Does a new three day review period get triggered if the APR becomes "inaccurate" (up or down) as is stated in the Rule or only if the APR "increases" as is stated a CFPB fact sheet?
Confusion has occurred over whether a new three-day review period is triggered if the APR decreases. We reached out to the CFPB and received a phone call from one of the staff attorneys who actually answered the phone. Of course the response was that the Rule (which states "inaccurate") is actually correct when it references Regulation Z section 1026.22(a)(2). However, we were told to read further into 1026.22 to get to the heart of the issue. The attorney pointed me to three sections:
"1026.22 Determination of annual percentage rate. Link to an amendment published at 78 FR 80112, Dec. 31, 2013.
(a) Accuracy of annual percentage rate.

(2) As a general rule, the annual percentage rate shall be considered accurate if it is not more than1/8 of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section."
Notice the words "above or below." However, we are then directed to 1026.22(a)(4) which further clarifies the accuracy of the APR if it is in conjunction with a mortgage on real property:
"(4) Mortgage loans. If the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate determined in accordance with paragraph (a)(1) of this section, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, the disclosed annual percentage rate shall also be considered accurate if:
(A) The disclosed finance charge would be considered accurate under§ 1026.18(d)(1); "

And then to determine accuracy for an APR connected with real property 1026.18(d)(1)(i) and (ii) which state:
"(1) Mortgage loans. In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:
(i) Is understated by no more than $100; or (ii) Is greater than the amount required to be disclosed. "

Therefore, if the original quote is more than the final APR, it is deemed accurate. However, the CFPB attorney reminded us that if the APR is lower at the time of consummation it is deemed accurate only if the reduced APR is due to a reduction in interest rate or fees. If the math was wrong at the original quote and the creditor corrected it at the time of consummation, the creditor can not avail itself of the protection by simply saying, the APR decreased so I am compliant.

QUESTION: Is it true that the closing/settlement provider may not give a copy of the Closing Disclosure (CD) to real estate agents?
Since the CD is considered a loan document, that determination is up to the lender. Most lenders have stated that they will give a copy of the completed CD to the closing entity and the borrower and if the borrower wants their real estate agent, attorney, or CPA to have it, then the borrower will have to supply it.

Because the CD contains a great deal of NPPI (Non-Public Personal Information), we should be cautious and follow the lender's instructions. On June 9, 2015, Bank of America answered a similar question by saying "Bank of America will distribute the buyer/borrower's Closing Disclosure to the borrower(s), while the settlement agent is responsible for preparing and delivering the seller's Closing Disclosure. The settlement agent should continue the practice of providing the Closing Disclosure to the Real Estate Agent(s) involved in the transaction, as applicable." Since Bank of America indicates the settlement agent is responsible for the seller's CD it leads us to

believe that their comment about sharing the CD with the real estate agents is referring to the seller's CD only. But we do not know for certain.

On July 9, 2015 Bank of America advised "providers" that they should follow "state or local laws as well as any applicable provisions of the sales contract when determining how/if to share the borrower's and/or seller's" CD. But what if the letter of instructions from the lender contains prohibitive language? Publically, Wells Fargo has said we may NOT give a copy of this loan form to the third parties involved in the transaction.

Recognizing this issue and many other issues created by the provisions of the Rule, ALTA created a shareable closing form called the ALTA Settlement Statement (ALTA SS). When ALTA talked about the benefits of using the ALTA SS in conjunction with the CD it said, "It is a form that can be shared with the interested parties (REALTORS®, Attorneys, CPAs, etc) as the CD is a loan form and the majority of lenders will not permit its distribution to anyone except the borrowers." Perhaps the answer is to utilize the ALTA SS (in a bifurcated format) so that you have a form that can be shared with all parties.

Questions? Contact TRID@oldrepublictitle.com.

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With one month left prior to the CFPB's TILA-RESPA Integrated Disclosure (TRID) Rule taking effect on October 3, efforts to prepare for implementation should be in full swing. Old Republic Title continues to help you be ready for the TRID Rule and the changes ahead!

On Page 5 of the Closing Disclosure there is a box entitled "Contact Information." Who should be listed in the Real Estate Broker and Settlement Agent sections and what License ID's should be used?
The CFPB's goal for requiring the listing of contact information is so that the consumer has easy access to the appropriate parties with any questions they might have at the time of receipt and post-closing.

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

License number is defined in the Rule on Page 1871 as "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."

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

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

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

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

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

Based on this information in the Rule, it leaves Sections B or C (depending on the circumstances) for the collection and disclosure of the premium tax attributable to the Loan Title Policy premium and Section H for the collection of the premium tax attributable to the Owner's Title Policy premium.

Please seek guidance from your lender regarding their determination for the placement of the premium taxes as defined above and if they are unsure you are welcome to share section §1026.3.7(g)(1) – (3) with them on page 1798 of the TRID Rule.

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

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

If a creditor/lender on a commercial transaction requires a mortgage on one of the parties' residences, does that mortgage fall under the provisions and requirements of TRID?
This was verbally answered by a CFPB attorney who said that as long as the "primary" purpose of the mortgage on the residential property is NOT for "personal, family or household purposes," it does not fall under the provisions of TRID.

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One of our agents was asked the following question from a lender (also known as creditor): What are you going to do with all of your free time now that you will not be preparing the Closing Disclosure (CD)?

The nature of this question proves that more education is needed about the impending TILA-RESPA Integrated Disclosure (TRID) requirements. The TRID Rule will require a great deal of additional work by the settlement industry. To respond to similar questions and misperceptions, here are some points that you may want to make.

1) Even though the creditor (in most cases) is going to issue the CD, the settlement professionals will need to input the exact same information into their systems so that the transaction can be balanced and disbursed.
2) Most settlement agents will have the additional role of creating the ALTA Settlement Statement (ALTA SS), or other disbursement form, to accurately disclose the title premiums as the CD does not allow for such transparency in most states. The ALTA SS will also allow the settlement industry to obtain signatures approving the figures and authorizing disbursement. This is something most creditors want for their files.
3) The settlement professionals will be looked upon to assist the creditors in gathering fees from the real estate agents involved in the transaction earlier in the process so that the creditors can meet disclosure delivery requirements. To-date, this was typically a function accomplished just prior to or at settlement where the real estate agent was present (which made it easier to obtain) and did not require multiple calls when a non-responsive party was involved.
4) The settlement industry is still responsible for gathering the figures, creating and delivering of the seller's side of the CD.
5) The anticipated delays in closings will cost the settlement industry time and money due to the repeated bring-down/update title searches required each time a closing moves from one day to the next.
6) The anticipated delays in closings will cost the settlement industry time and money due to the required changes to tax and per-diem calculations which will have to be reported and monitored while the creditor changes and re-transmits the revised CD.
7) Closings that used to take 45 minutes are taking two hours today, before TRID implementation. How long will they take after implementation while the settlement industry waits for the creditor to make the $40 adjustment for the broken window on the CD?
8) Because the borrower (also known as consumer) will receive the CD three to seven days in advance of consummation, the settlement company may have to take the time to respond to questions from the consumer when it is delivered and then again when they sit with the consumer. The settlement industry is happy to engage with the consumer whenever they can but the reality is it will require additional time and employee expense.

Free time? We think not! We hope that our business partners understand and respect that the settlement industry will be faced with the expense of schedule challenges, additional searches when there are delays, and additional employee time due to process changes resulting from the TRID Rule, just like they will.

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