TRID, Closing Disclosure and Florida Insurance Premium Rule FAQs

(Updated July 18, 2016)

NOTE: This document does not include FAQs specific to DoubleTime®. DoubleTime® FAQs can be found HERE on The Fund website in the DoubleTime® Support Center.

NOTE: *Lenders may have a different interpretation of the answers to these FAQs. Lender instructions should normally be followed since they are responsible for the content of the CD. Document any disagreements you have with lender instructions that are at odds with your interpretation.*

TRID Rule Interpretation

Closing Disclosure Functionality

Florida Rules

TRID Interpretation

T1. Which loans are covered under the new law requiring the Closing Disclosure?

A. Most consumer mortgages. Exceptions include reverse mortgages, open-ended loans such as HELOCS, loans for business, commercial, or agricultural purposes, and loans made to other than natural persons.

T2. If it is a cash deal, will the Closing Disclosure have only two pages? What if it is a commercial deal?

A. The Closing Disclosure is only required and designed to be used for transactions which include a mortgage. Commercial transactions are exempt from its required use if the mortgage loan is "primarily" for business, commercial or agricultural purposes.

Although there is no prohibition from using the Closing Disclosure for cash and commercial transactions, you may use any form you wish for those transactions including the custom settlement statements found in DoubleTime®, the new ALTA designed forms, or the original two-page HUD-1(1974 version).

T3. Are time share sales covered by the new rules?

A. If the time share purchase includes a mortgage transaction which is considered to be a Covered Loan the new rules apply. However, the transaction is specifically exempted from having to comply with the three business day before closing rule related to delivery of the Closing Disclosure.

T4. How will a reverse mortgage be reflected as loan amounts, interest rates and life of borrower are uncertain?

A. Reverse mortgages are not subject to the new TILA-RESPA Integrated Disclosure rules. Those loans will continue to be governed by Good Faith Estimates, HUD-1 settlement statements, and Truth in Lending disclosures.

T5. Do we count Saturday when applying the mail box rule if the bank is closed on Saturday?

A. Yes, except for those occasions when your Saturday is one of the four federal holidays which falls on a day which floats from year to year (New Year's Day, Independence Day, Veterans Day, and Christmas Day). In that case Saturday is not counted, but the day on which the holiday might be observed is counted even though government offices and banks are closed and regular mail service is suspended.

Other than the exception for federal holidays, it makes no difference if the bank is closed on Saturday as far as counting the days related to receipt of the Closing Disclosure including the mail box rule.

T6. If a new service is requested after the Closing Disclosure has been delivered does a new Loan Estimate have to be given to the borrower?

A. Once a Closing Disclosure has been delivered there will never be another Loan Estimate. New services will be only be disclosed on the Closing Disclosure.

T7. Can we provide a copy of the Closing Disclosure to realtors?

A. Realtors generally request signed HUD-1 closing statements for their files. Associations sometimes request them as well. Sharing the borrower's CD with third parties, however, should be limited to those situations where you have both lender and borrower permission.

Unlike the HUD-1, the CD is created by the lender and the lender has ownership rights to it. For that reason, their approval is needed. In addition, since the CD contains far more Non-public Personal Information (NPI), caution should be exercised and borrower approval obtained before sharing it with others.

A better solution is to provide the seller's CD which you will prepare. In the rare event the borrower has paid for all or part of the real estate brokerage services, get permission and provide the borrower CD; or provide your own combined settlement statement which only reflects settlement charges.

T8. Do the new TRID rules apply to an assumption of mortgage?

Generally speaking, yes. TRID rules apply to an assumption provided the following three elements are present: 1) it is a residential mortgage; 2) the creditor expresses their acceptance of the new consumer; and 3) there is a written agreement (See 12 CFR 1026.20(b) and associated commentary).

Noteworthy is that the approval of creditworthiness, notification of change of records, mailing of a new coupon book, and acceptance of payments from the new consumer do not in and of themselves constitute the express agreement to accept the new consumer as required.

T9. Is there a timeframe for the seller to receive the Seller's Closing Disclosure?

A. The Seller's Closing Disclosure must be provided to the seller no later than the day of closing. You can provide it as early as you want, but there is no three-day rule like there is for the borrower's form.

T10. Can a buyer be "forced" to use the services of lender's selected settlement agent?

A. Yes. The lender can require the borrower to use a lender-selected provider. (This is not new under TRID. It was also the case for the GFE/HUD, though it rarely occurred.)

The lender can choose the provider; the lender can give the borrower a list of at least two providers and restrict the borrower's choice to that list; or the lender can give the provider a list of at least one provider and allow the borrower to choose from the list or find a provider on their own ("shop").

Even when the borrower chooses someone, the lender can still deny use of that provider when the provider is not on the lender's internal approved list. (E.g. settlement agent has no access to Closing Insight or other collaboration portal as required by the lender; has failed to meet the lender's "Best Practices" requirements, etc.)

T11. Is my transaction covered by TRID Rules?

A. Most consumer mortgage loan closings are covered. Exceptions include reverse mortgages, open-ended loans such as HELOCS, loans for business, commercial, or agricultural purposes, and loans made to other than natural persons. Let me state the obvious: cash deals are not covered by TRID. The Closing Disclosure is only required and designed to be used for transactions which include a mortgage. Commercial transactions are exempt from its required use if the mortgage loan is "primarily" for business, commercial or agricultural purposes. Although there is no prohibition from using the Closing Disclosure for cash and commercial transactions, you may use any form you wish for those transactions including the custom settlement statements found in DoubleTime®, the new ALTA designed forms, or the original two-page HUD-1(1974 version).

T12. What closing statements can I provide to the real estate broker and other third parties?

A. Unlike the HUD-1, the Closing Disclosure is created by the lender and the lender has ownership rights to it. For that reason, their approval is needed. In addition, since the Closing Disclosure contains far more Non-public Personal Information (NPI), caution should be exercised and borrower approval obtained before sharing it with others.

A better solution is to prepare a joint closing statement such as the ALTA statement or the custom settlement statements found in DoubleTime® and other closing software. The general sense is that these can be provided to real estate brokers without significant concern.

The TRID rules require that the settlement agent prepare and provide a Seller Closing Disclosure. There is no reason to give that to anyone other than the seller if you have prepared another joint closing statement but there is no NPI concern about the Seller Closing Disclosure.

T13. There is a first and a second mortgage in my transaction. Can I show both mortgages on one closing disclosure?

A. Lenders have the option of having the second loan disclosed on a separate document, or they can include it on the Closing Disclosure for the first mortgage. If shown on a separate document, it would not necessarily be on a Closing Disclosure. For example, because a HELOC is an "open-end" loan transaction, it could be disclosed using a HUD-1 type document or settlement statement. Only "closed-end" loan transactions are covered by the new rules and must use the Closing Disclosure unless they qualify for some other exemption.

If the lender wants to include everything on one Closing Disclosure, we believe the separate charges related to the second loan should be disclosed in "Section H. Other;" but the lender has the discretion to request itemization elsewhere.

T14. Where and how should I disclose the Florida policy surcharge (currently $3.28) on the Closing Disclosure?

A. The policy surcharge required by Sec. 627.7865, F.S. is described in Sec. 631.401(2), F.S. as a "governmental assessment." As such it should be disclosed in "Section E. Taxes and Other Government Fees." There is no hard and fast rule as to how it should be described on the Closing Disclosure, but it must include the reference "State of Florida" as the payee following the word "to" on that line. **HOWEVER, THIS DOES NOT CHANGE THE REQUIREMENT THAT THE SURCHARGE BE DISBURSED TO THE UNDERWRITER AS YOU HAVE ALWAYS DONE.**

It may help to think of the Closing Disclosure as a DISCLOSURE document, not a DISBURSEMENT document. The surcharge is being disclosed as a governmental assessment. But it is disbursed to the underwriter, who then pays the surcharges it has collected to the State. Since the surcharge is not a component of title insurance, it should never be preceded by "Title - ."

NOTE: Lenders may have a different interpretation. Lender instructions should normally be followed since they are responsible for the content of the Closing Disclosure. We believe that if the lender asks for your assistance or advice, separately itemized in Section E would be the preferred placement.

T15. If a 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?

A. 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.

T16. Do the provisions of the Rule apply to second mortgages?

A. There is no exception for a mortgage merely because of its priority. Such a mortgage may, however, qualify for an exemption for other reasons. For example, a Home Equity Line of Credit (HELOC), which is often secured by a second mortgage, is not covered since it is an "open-end credit" transaction. It would not be covered even if it was a first mortgage since the TRID Rule only governs "closed-end credit" transactions. ("*Closed-end credit* means consumer credit other than 'open-end credit'" 12 CFR 1026.2(a)(10))

T17. When a transaction has two simultaneous mortgages are one or two Closing Disclosures used?

A. When conducting a transaction with two simultaneous mortgages, the primary lender will make the decision as to whether there will be one Closing Disclosure (CD) or two. If the second loan is exempt (e.g. HELOC; downpayment assistance loan), a separate settlement statement might be used since a CD would not be required. (The Rule only discusses the disclosure and placement of the proceeds from the subordinate loan on the primary loan's CD when two settlement statements are being utilized and leaves open the possibility that all costs would be shown on one.) If the lender chooses to show both the primary and subordinate loan on one CD, the lender will determine how to disclose the costs associated with the subordinate loan.

T18. May lenders charge application fees or fees for pre-approvals?

A. The lender may not charge anything at the time of loan application except a reasonable fee to pay for a credit report. After delivery of the Loan Estimate **and** after the consumer gives an indication that he/she wants to proceed with the loan, the lender may charge additional fees and require the additional information needed to underwrite the loan.

T19. What are the six elements that trigger a loan application has been received and then requires the lender issue the Loan Estimate within three business days?

A. You can easily remember the six elements by its acronym = A.L.I.E.N.S. (See 12 CFR § 1026.2(a)(3)(ii))

Address of Property
Loan Amount Sought
Income of Borrower
Estimated Value of Property
Name of Borrower
Social Security Number

T20. Who prepares the borrower's Closing Disclosure (CD) form?

A. The Rule grants the creditor the option of preparing the CD or sharing that responsibility with the settlement agent. TRID Comment 19(f)(1)(v)-3 states: "If a settlement agent provides disclosures...in the creditor's place, the creditor remains responsible…for ensuring that the requirements of [12 CFR] § 1026.19(f) have been satisfied."

T21. How much of a change to the APR is allowable without triggering a new three-day review period?

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

In unofficial guidance, CFPB Director Richard Cordray has stated that the CFPB will only be concerned about changes that *increase* the APR by the stated limits. Despite this guidance, lenders may remain cautious and require a new three-day review period for decreases in APR as well.

T22. I thought that the whole process was that NOTHING changed after the delivery of the Closing Disclosure.

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

1) If the annual percentage rate (APR) becomes inaccurate,
2) If the loan product is changed, or
3) If a pre-payment penalty is added.

Know also that other last minute changes may cause a lender to have to re-submit the file for additional underwriter review or for a new appraisal. This too would delay a closing though it would not be related to any TRID-Rule violation.

T23. If the closing is a "mail away" we usually need the package ready several days before closing. Does the three-day time period also apply to the closing documents from the lender or is it just the Closing Disclosure?

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

T24. How do I handle the situation if the consumer states that they never received the Closing Disclosure?

A. 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. "Receipt" then is defined by the Rule and does not necessarily mean that the consumer actually received the CD!

T25. If a consumer writes a statement specifically waiving their right to the three-day review is there a provision to allow for this?

A. The rule is quite clear on this so here it is:
Consumer's waiver of waiting period before consummation. If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the three-business-day waiting period… after receiving the (Closing Disclosure). To modify or waive the waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited. See 12 CFR 1026.19(f)(10)(iv).

It is important to remember that the definition of "consumer" under the Rule is limited to the borrower, as a consumer of credit. The seller is not considered a consumer under the Rule.

As a practical matter, lenders are unlikely to accept a waiver for a variety of reasons including instructions from the investor lined up to purchase the loan from the lender.

T26. Do the regulations in the Rule affect the three-day right of rescission on refinances or do the borrowers get three days prior to signing plus three days after?

A. The three-day right of rescission for covered refinance transactions does not change with the new Rule. Therefore the consumer will have three business days prior to consummation to review the fees, terms and charges and at least three business days after consummation to exercise their right to rescind.

T27. When a transaction closes late in a calendar year, the lender often requires the full payment of the current year's property tax bill. Where should that payment be disclosed on the Closing Disclosure (CD)?

A. Since an October closing usually means the first loan payment will be due on December 1, lenders often want the settlement agent to collect for and make payment of the current year's tax bill when it becomes available in November. (Lenders may also insist upon similar withholdings and payments for closings in other months due to the logistics of setting up and administering the

borrower's escrow account for future payments.) Here are some examples of how lenders may allow these payments to be disclosed:

"Section F. Prepaids" is reserved for items the lender requires to be paid in advance of the first loan payment. Payment of the tax bill in November in advance of the first loan payment due in December satisfies that condition. If shown in Section F. Prepaids, the payment would likely be disclosed in the borrower's column, but it could be directed to the seller's column as well. In either case, the proration on page three in the Summaries of Transactions tables will apportion the obligation between the parties.

"Section H. Other" is intended to capture optional items as well as those services which the lender does not require as a condition of closing the loan. Since arguably the payment of a tax bill before its due date is not a condition for closing the loan, some lenders may decide that this is the appropriate location.

"Section N. Due from Seller at Closing" is intended, among other things, to capture the payoff of liened items such as the seller's existing mortgage. Although some may discount the disclosure here of a not yet due tax bill, they do so on the theory that no lien has been recorded. Since, in Florida, the lien attaches automatically on January 1st of the tax year without the necessity of a recording, we feel this solution addresses the Florida situation accurately and that Section N is a viable alternative.

T28. Where will we show payments to construction subcontractors on the Closing Disclosure? What if there aren't enough lines?

A. That depends on the form used by the lender. When construction is financed, there often is no seller. That opens up the possibility that the lender will require the use of the CD form H-25(J) which can be used when there is no seller. On that form, page three has a Payoffs and Payments table where these payments can be itemized. If the number exceeds 15, the final line can be used in connection with an addendum which would include additional payments.

Since the lender may not necessarily use the alternative form, the payments can be disclosed on the standard form H-25(A) in Section K. Due from Borrower at Closing as Adjustments. Since there are so few lines, the bottom line can contain the total of all additional payments disclosed on an addendum.

T29. Where are the buyer's and seller's signature lines on the Closing Disclosure?

A. Like RESPA and the HUD-1, there is no requirement that either party acknowledges the truthfulness of the form or authorizes disbursements. (However, the Rule provides an option for the lender to include a Confirm Receipt signature for the borrowers.) Our Florida Insurance Premium Disclosure rule requires such an acknowledgement and authority and the required language confirms the parties review and agreement with the CD and any other settlement statements used by the settlement agent. In the event you need a signature page for your CD

forms, you may use an addendum to add them. (In DoubleTime®, "Addendum B - Customary Recitals", which includes the same certifications as found in the Florida rule, will satisfy that need.) Finally, the optional use of an ALTA Settlement Statement will also provide you with the ability to have the parties sign and the same certifications mentioned above will be found there as well.

T30. What are the procedures when something changes after closing?

A. 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 Closing Disclosure (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.

T31. Where can I read the new regulations?

The regulations related to TRID are codified in 12 CFR Part 1026 - Truth in Lending (Regulation Z). The CFPB has a link at http://www.consumerfinance.gov/eregulations/1026-1/2015-18239#1026-1 Another site which many have found useful is https://www.bankersonline.com/regulations/12-1026-000

In particular, the following sections are particularly useful in understanding forms completion:
12 CFR 1026.37 - Content of disclosures for certain mortgage transactions (Loan Estimate)
12 CFR 1026.38 - Content of disclosures for certain mortgage transactions (Closing Disclosure)
Other sections which contain significant guidance are the following:
12 CFR 1026.2 - Definitions and rules of construction
12 CFR 1026.3 - Exempt transactions
12 CFR 1026.17 - General disclosure requirements
12 CFR 1026.19 - Certain mortgage and variable rate transactions
12 CFR 1026 Appendix D - Multiple Advance Construction Loans
12 CFR 1026 Appendix H - Closed-End Model Forms and Clauses

T32. Do I have to provide a Closing Disclosure form to the seller? (Why can't I just give them a HUD-1, ALTA Settlement Statement, or some other "easy" form?)

TRID requires settlement agents to provide "the disclosures in 12 CFR § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction" (12 CFR § 1026.19(f)(4)(i)). "The settlement agent complies…by providing a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or

alternatively providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable." (Comment 19(f)(4)(i)-1.)

Providing a HUD-1, ALTA Settlement Statement, or some other "easy" form does not satisfy these TRID requirements. The easiest way to comply is to complete and provide promulgated Form H-25(I) *Mortgage Loan Transaction Closing Disclosure - Modification to Closing Disclosure for Disclosure Provided to Seller - Model Form.* In the alternative, you have two other options pursuant to the rules outlined above. With the lender's permission, you can provide the seller with the same form provided to the borrower as long as it includes all the seller information including the specific charges for services and products for which the seller is responsible. Or you can provide a modified or redacted version of the same form after removing all information related to the borrower and lender by following the guidance provided by § 1026.38(t)(v).

T33. Must private lenders provide borrowers with loan estimates and closing disclosures?

Private lenders are exempt if the private lender does not meet the definition of "creditor" under 12 CFR § 1026.2(a)(17). Generally speaking that depends upon whether the private lender "regularly extends consumer credit" (S*ee,* 12 CFR § 1026.2(a)(17)(i)and(v)).

A person "regularly extends consumer credit" if they extended credit more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year* or if, in any 12-month period, they originate more than one "high-cost" HOEPA loan that falls under the provisions of 12 CFR § 1026.32, or one or more such credit extensions through a mortgage broker.

*If the numerical standards are not met in the preceding year, they apply to the current year.

CAVEAT: It should be noted that even private lenders who do not meet the definition of "creditor" are subject to the Loan Originator Compensation Rule, which does not require a Closing Disclosure, but has its own set of prohibitions and requirements. (Seller financers who finance no more than one or no more than three properties in any 12-month period may qualify for exclusion from this rule depending on the specifics of the transaction.) (*See,* 12 CFR § 1026.36)

T34. Can a borrower sign the note, mortgage and other loan documents before the day of closing?

There is no TRID provision which specifically prohibits the early signing of loan documents. However, many lenders have reportedly refused to allow early signings. This resistance is likely related to the TRID requirement that the Closing Disclosure be delivered three business days before "consummation." Since consummation is determined by state law, lenders have apparently concluded that an early signing is tantamount to consummation in some states. As such, an early signing would violate the three day rule if the Closing Disclosure was merely delivered three business days before the scheduled closing date.

When a mail away is anticipated, working with the lender in advance of setting the closing date will likely solve the problem. As long as the first Closing Disclosure is delivered early enough, signing ahead of time should not be a problem. It may take some effort though since many processors may

not understand the reasoning behind a seemingly hard and fast internal rule not to allow early signings.

T35. An LLC is buying a residence to be occupied by the two members of the LLC. The members will sign the promissory note in their individual capacities and not as representatives of the LLC. Why does the bank say the Closing Disclosure is required for this purchase by an entity?

TRID rules apply to the loan given to the borrower; not the purchase by the buyer. If the LLC was obtaining the loan the transaction would qualify for the exemption provided for "extensions of credit to other than a natural person." If the LLC was buying the residence for rental purposes it would likely qualify for the other § 1026.3(a) exemption for "an extension of credit primarily for a business, commercial or agricultural purpose."

Remember also that there is no prohibition on using the Closing Disclosure for exempt transactions. Ultimately it is the lender who makes the decision as to forms usage.

Closing Disclosure Functionality

C1. Is there going to be a special "worksheet" to calculate the credit to the Buyer for the title fees in a contract where the seller pays for the owners' policy?

A. In DoubleTime the rating calculator will produce a worksheet which reflects Florida rates. The Florida charges will automatically convert to TRID rates for display in the Closing Costs tables on the CD. DoubleTime will also populate a Florida Insurance Premium Disclosure you can use to compare Florida rating to TRID rating.

With that document you can subtract the Florida rate for the loan policy (which includes any endorsements) from the TRID rate for the same and the difference will be the adjustment amount for which the seller is responsible.

C2. If there are miscellaneous affidavits needed to clear the title, are they included in Line 01 (Recording Fees)? Does it matter if they are the seller's responsibility?

A. Yes, all per-page recording fees will be totaled and entered in the respective columns on a single line: Line 01 (Recording Fees), even those which are the responsibility of the seller.

Any costs payable by the borrower for recording additional documents will be added to the itemized charges for recording the deed and mortgage and the total will be disclosed in the borrower's column. Similarly, costs payable by the seller for recordings will be disclosed as a total in the seller's column on the same line and will not be separately described.

If you wish, you may show a complete itemization of recorded documents on an additional page as a "customary recital." In DoubleTime®, the Recording Worksheet found under the Reports Tab serves that purpose.

C3. Do e-recording fees paid to a third party get lumped in with all other recording fees on Line 01 (Recording Fees) of Section E (Taxes and Other Government Fees)?

A. Since Section E is reserved for payments to state and local governments it is unlikely that lenders will disclose these fees in that section since they are not paid to government. Instead, the proper location will likely depend on whether the lender authorizes or requires the use of e-recording services.

If required, they should be disclosed within the same table as the lender's title insurance premium. If authorized, but not required, they should be considered an elective service which would be disclosed within the table H. (Other).

Note also that under an interpretation of Florida law e-recording fees are arguably a component of the settlement fee when the use of such a service is not required by a lender.

C4. What if there is an error in disclosing closing costs? For example, what if a seller is charged for documentary stamps but it should be buyer's expense? Does the three-day period restart?

A. Changes to the amount of documentary stamps or the party paying the stamps are not changes which require a new three-day waiting period. They will necessitate a revision and re-distribution of the Closing Disclosure so inform the lender of the correction as soon as possible.

C5. Does a change to closing costs or change in cash to close require a revision to the Closing Disclosure to restart the three-day period?

A. Changes to closing costs or cash to close will require a revision to the Closing Disclosure, but will not automatically require a restart of the three-day delivery clock.

If the change is accompanied by either an increase in the APR above the legal limit, a change in the loan product, or the addition of a prepayment penalty, it is that change which will cause a restart of the clock.

C6. In certain circumstances, a charge attributable to Buyer may become apparent after CD has been delivered (i.e. HOA fee attributable to the Buyer). How will the lender learn of this and will such a change require a new three-day waiting period?

A. A change in an HOA fee alone will not require a new three-day waiting period. A new three-day wait is only required when one of the following occurs:

- Change in the Annual Percentage Rate (APR) as calculated by the lender
- Change in the loan product offered to the consumer
- Addition of a prepayment penalty to the loan product.

The lender will learn of changes when the settlement agent provides this updated information using the means of communication recognized by the lender. Many lenders are indicating they will use third-party cloud-based software such as Closing Insight to communicate with settlement agents.

C7. Will the Lender answer shop or not shop questions or is closing agent to determine these issues?

A. The lender will answer the shop or not shop questions. The lender is responsible for the Closing Disclosure and will determine the placement on the form of your fees and charges.

C8. How do we calculate Down Payment/Funds from Borrower in the Calculating Cash to Close table on page 3 of the Closing Disclosure?

A. The Down Payment/Funds from Borrower line serves two distinct purposes. Down Payment is related to a purchase transaction while Funds from Borrower is used for all other transactions.

For purchase transactions, Down Payment simply represents the difference between the purchase price and the principal amount of the loan governed by this Closing Disclosure.

When there is no seller involved, Funds from Borrower represents the amount, if any, the consumer must bring to closing to complete this loan transaction. The software will calculate this sum for you.

C9. What happens if at the walk-through (closing date or the day before), the seller agrees to give a credit to buyer?

A. This depends on the reason for the credit. If the credit does not affect the potential value of the property, the change would fall into the same category as other changes which require a new version of the Closing Disclosure, but not a new three-day waiting period.

The credit will normally be disclosed within the borrower and seller Summaries of Transactions tables. If, however, it is a specific credit for a service itemized in one of the Closing Costs tables on page two, the credit will instead be reflected on that line.

If the credit is being given because a repair has not been made or the seller is removing fixtures or personal property the parties had previously agreed would stay, this may affect the appraised value of the property. Under other rules affecting appraisals, as well as the lender's internal underwriting guidelines regarding appraised values and loan amounts, the need for a new Closing Disclosure and three-day waiting period is likely in this scenario.

Lenders are advising real estate agents to have walk-through inspections performed earlier than the day of closing. It is also important that sellers be informed of the potential delay in closing date if contracted repairs are not performed or appliances or other items are removed from the premises. Communication between all parties and their real estate agents is extremely important.

C10. What if we don't want our FL license ID number disclosed under contact information on the Closing Disclosure?

A. The Closing Disclosure forms require contact information for the entity as well as an individual within the company. Failure to disclose relevant information could be considered a rules violation subjecting the lender to a significant penalty. If you choose not to disclose this number, the lender may refuse to do business with you and your firm.

If you are concerned about the privacy of your information, you should know that the requested license ID is a matter of public record. It is NOT your social security number.

C11. What identification number should be used for the individual in the contact information table?

A. On the "Contact ___ License ID" line the license number, or other unique identifier, of the natural person who interacts most frequently with the consumer is disclosed.

In the event that person does not have either number, the number of the most immediate supervisor who has such a number will be disclosed. The rule is more concerned that a number be disclosed even if that is not the employee who interacts most frequently with the consumer!

Attorneys and Florida Registered Paralegals will disclose a Florida Bar license number; Certified Paralegals will disclose a NALA account number; and licensed title agents who are not attorneys will disclose a Florida Department of Financial Services license number. (Note: lenders may have a more restricted view of rule interpretation and not allow use of Florida Certified Paralegal or NALA account numbers. This is because the commentary to the rule found at 38(r)-6 says not to use the name of an individual who is "only performing clerical functions.")

C12. What identification number should be used for the entity in the contact information table?

A. On the "__License ID" line the license number or unique identifier associated with the legal or trade name of the individual or company employing the natural person who interacts with the consumer is disclosed.

In the case of an entity, that will be the number assigned by the regulatory body in charge of registering the business activity, such as the Florida Department of State. If the entity is not registered, the field will be left blank. If a sole practitioner, the Florida Bar license number will be disclosed. In some situations, the attorney could be both the entity and individual contact for disclosure purposes if no employee has either a license or other unique identifying number for purposes of the form.

C13. What should we be using as a disbursement sheet?

A. The Closing Disclosure form is difficult to use as a disbursement document for a variety of reasons. DoubleTime® will continue to seamlessly produce a "Balance Sheet" report to provide that solution for you. You might also rely upon a separate settlement statement for the participants and use it as a disbursement document. If you do so you must be prepared to provide a copy to the lender.

C14. Can we put signature lines on a separate page if needed?

A. Just like the HUD-1, the rules do not require signatures other than when the Confirm Receipt disclosure is included. The lender will direct you if they want signatures on the Closing Disclosure.

You may also choose to have the parties sign your own settlement statement for your file. If you do, the lender will likely want a copy.

C15. Why aren't there any tables on the bottom of my borrower's Closing Disclosure page four?

A. The AIR and AP tables which may appear at the bottom of page four may only appear when they contain information. They will be displayed if the loan has an adjustable payment feature (AP) and an adjustable interest rate feature (AIR). If only one feature, then only one table will appear. In your case your client's loan is likely a fixed rate product. Fixed rate products generally do not include adjustable payment or adjustable interest rate features. Under those circumstances, no tables are allowed to appear in blank under TRID rules.

C16. Where should I disclose the Florida policy surcharge (currently $3.28) on the Closing Disclosure?

A. The policy surcharge required by Sec. 627.7865, F.S. is described in Sec. 631.401(2), F.S. as a "governmental assessment." As such it should be disclosed in Section E. Taxes and Other Government Fees. There is no hard and fast rule as to how it should be described on the CD, but it must include the reference "State of Florida" as the payee following the word "to" on that line.

Since it is not a component of title insurance, it should never be preceded by "Title -".

NOTE: *We know that others have a different interpretation and that Sections B, C and H have also been suggested. The reason for the disagreement is based upon the conflict between the Loan Estimate rule (§ 1026.37(g)(1)(i)) and the Closing Disclosure rule (§ 1026.38(g)(1)(i) and (ii)) We believe that if the lender asks for your assistance or advice, separately itemized in Section E would be the preferred placement.*

C17. How do I charge and collect eRecording fees?

A. Most eRecording fees are considered to be a component of "closing services" as defined by Sec. 627.7711(1)(a), F.S. and must be included in the settlement/closing fee. As such, they may not be separately itemized. (You may, however, choose to itemize costs and services which are included in your settlement/closing fee on a separate disclosure.)

NOTE: *Lender instructions may specifically direct itemization. If that is the case, you should follow the lender instructions.*

C18. How are charges for municipal lien searches (and similar searches) shown on the closing statement or Closing Disclosure?

A. Current interpretation is that a lien search is considered part of the "title search" as defined by Sec. 627.7711(4), F.S. and that it may be included in the charge for the title search. (A search of the records of a Uniform Commercial Code filing office is the only title search specifically excluded from such treatment.)

Based upon unofficial guidance from the State of Florida, as well as the practical problems faced by lenders in creating Loan Estimates, best practice would suggest that you combine all of your title search fees into one entry on the CD such as "Title - Title Search to "Name of Settlement Agent"." When done in this fashion you would issue separate checks for all services included within the combined amount.

In the event you are authorized or directed to itemize a lien search separately from other title search charges, you should disclose it as "Title - Title Search to Lien Search Company."

For closings where a CD is not issued (e.g. cash, commercial, etc.) you may choose to either combine your title searches into one fee or to separate them. In either case, the fee should be called "Title Search." If you choose to combine the fees, the payee should be the settlement agent who handled ordering the searches. If the fees will be displayed separately you would list the payee as the entity to whom the bill is owed. For example, two fees would be displayed as:

Title Search Fee to ATFS, LLC - $150
Title Search Fee to Lien Search, Inc. - $250

Whereas a combined fee would be displayed as:

Title Search Fee to Adam Attorney, P.A. - $400

C19. Am I permitted to separately itemize and disclose Closing Insight® transaction fees on the CD?

A. Until we get more experience with how lenders are handling Closing Insight and other portal fees, these fees should be separately itemized when initial numbers are given to the lender.

C20. How do I give a "Butler Rebate"?

A. The Butler Rebate is a rebate of all or a portion of a title agent's share of title insurance premiums. It can only be given to the party charged for the title insurance premium upon which the rebate is based.

A Butler Rebate should be separately disclosed; preferably in Section H ("Other") on page two, but it could also be disclosed on page three in the Summaries of Transactions tables. In Section H the amount of the rebate is disclosed as a negative number placed in the column of the party receiving the credit. The description can read "Butler rebate from (title agent/agency)."

When disclosed on page three, rebates to borrowers will be disclosed as a positive number on an available blank line in Section L (Paid Already by or on Behalf of Borrower at Closing) under "Other Credits" ("Butler rebate from title agent/agency"). Rebates to sellers will be similarly disclosed on a

blank line in Section M (Due to Seller at Closing) above "Adjustments for Items Paid by Seller in Advance."

C21. How do I show a reissue credit?

A. The reissue credit is not a true credit; rather it is a less expensive promulgated rate which is applied to new policies when a qualifying prior policy has been provided (See Rule 69O-186.003, F.A.C.). Therefore, the premiums disclosed on the CD will already reflect the "reissue credit" though it will not be separately stated.

You are free to inform the client about the savings from the application of the reissue rate by showing the savings on a separate addendum or printout.

C22. Can I itemize association estoppel fees?

A. Yes. Information provided by an association does not come from "official or public records" so obtaining this information is not considered to be a title search.

C23. Which line and what number do I put in the Contact Information table for real estate agents?

A. You will need both the license number of the agent and the license number of the agent's real estate broker to complete the Contact Information table. The broker's state-issued license number will go on the first "FL License ID" line and the agent's license number will go on the second "FL License ID" line. You can search the Florida Department of Business & Professional Regulation website for license information at https://www.myfloridalicense.com/wl11.asp

C24. Why is the Owner's policy listed in the "Other" Section (Section H)?

A. Unlike the HUD-1 where settlement services were grouped together, the location of the individual services and products on the Closing Disclosure are primarily based upon whether the services are required to complete the loan transaction. Those connected to the loan are further categorized based upon who is providing the service and sometimes by the ability of the borrower to shop for a required service. Those not required to complete the loan transaction, like the Owner's policy, are grouped together in Section H even though they may be required by the purchase and sale contract (e.g. real estate agent commissions; home warranty; seller-paid owner policy), are optional products or services chosen by the borrower (e.g. inspections; buyer-paid owner policy), or otherwise identified by TRID (e.g. association fees and charges).

C25. How is title insurance premium calculated and disclosed on the Closing Disclosure?

A. The premiums for owner policies, loan policies, and endorsements, continue to be calculated using Florida's promulgated rate structure. (This includes use of the discounted rates for simultaneous issue, substitution loan, new home purchase and reissue.) The display of premium on the Closing Disclosure in a purchase transaction are effected by making a calculation for a stand-alone loan policy, including endorsements, and a separate calculation of the cost of the purchase of

both policies including endorsements. The difference between the two sums is the "incremental increase" attributed to the purchase of both policies.

The cost of a loan policy, and its endorsements, is disclosed on the Closing Disclosure as if there were no owner policy to be given (i.e. stand-alone loan policy). The reason TRID uses this method is based upon the premise that a borrower needs to know the cost of the policy required by a lender should the borrower choose not to purchase an owner's policy. (This ignores a common scenario where the purchase of the owner's policy is, by contract, being paid for by someone else, usually the seller.) The cost for the purchase of an owner's policy is disclosed as the incremental increase attributed to the purchase of an owner's policy when both policies are purchased.

The official commentary to the rule explains these procedures at http://www.consumerfinance.gov/eregulations/1026-Subpart-E-Interp/2015-18239#1026-38-g-4-Interp-1 and at http://www.consumerfinance.gov/eregulations/1026-Subpart-E-Interp/2015-18239#1026-37-g-4-Interp-2

C26. How do I provide a borrower the benefit of a simultaneous rate on a loan policy issued in conjunction with a second mortgage in a purchase transaction with two mortgages?

A. When a lender requires a Closing Disclosure for the second mortgage the title insurance premium must be disclosed by applying the same TRID rule as for the first mortgage. Furthermore, Florida currently requires the collection of the $3.28 surcharge for all policies except simultaneous issue. You must therefore disclose the TRID rate for the loan policy in the Loan Costs Section (B or C) and the surcharge in Section E. Taxes and Other Government Fees on the secondary CD.

If an owner's policy is being issued in the transaction as reflected on the primary CD, you can provide a credit on the secondary CD for the difference between the TRID rate and simultaneous rate coupled with credit for the surcharge in section H. Other. Subtract the simultaneous rate from the TRID rate and add the $3.28 surcharge to the difference. Disclose this sum in the borrower's column as a negative number and describe the entry as "Title - Owner's Coverage credit to (agent/agency)."

If borrower opts out of the owner's policy on the primary CD, removing that product on the primary CD and the credit on the secondary CD will be all that is necessary.

C27. Why are there three "Cash to Close" entries on the five-page Closing Disclosure form?

A. Page one displays the significant highlights of the transaction for the borrower. The cash to close entry at the bottom of the page is intended to provide the borrower with the exact amount needed to complete the transaction without explaining how the amount was determined.

The Calculating Cash to Close table at the top of page three compares the costs and cash to close as estimated on the Loan Estimate with the final costs and cash to close disclosed on the Closing Disclosure.

The cash to close entry at the bottom of page three displays the amount determined by subtracting the borrower's credits in Section L from the borrower's debits in Section K.

All three entries must be the same. If not, there is a problem with one or more entries on the CD. Often it is due to an improper calculation of the "Down Payment/Funds from Borrower" entry in the Calculating Cash to Close table.

C28. Why do lenders refuse to allow use of the "Seller Credit" lines when the contract requires the seller to provide a lump sum credit for closing costs?

A. The regulations allow use of the Seller Credit lines in the Summaries of Transactions tables on page three for "a lump sum **not otherwise itemized** to pay for loan costs…and other costs…" (12 CFR § 1026.38(j)(2)(v)). The contractual reference that the credit is given for closing costs provides a lender the option of moving individual borrower closings costs into the seller's paid at closing columns on page two until the amount of the credit is met. If any of these costs were included in the APR calculation the effect of these movements is to lower the loan's APR disclosure.

You may recall that lenders frequently requested the same movement of costs on the original HUD-1 before the GFE/HUD rules came into play in 2010. On a GFE/HUD-1 this was not allowed by rule.

Florida Rules

F1. Have the FR/Bar and FAR contracts been amended to address these new rules?

A. Yes, both have been revised. The new versions are the FloridaRealtors/FloridaBar- 4 Rev. 9/15 and the CRSP-14 Rev. 9/15.

F2. Why did the Florida Department of Financial Services adopt this new rule?

A. As reflected in the Notice of Rulemaking Development, it was needed to correct the "inadequate and potentially misleading information regarding the cost of title insurance" and to reverse "the unintended consequence of relieving the settlement agent from closing process liability, even though the settlement agent continues to handle the disbursement of escrow funds."

F3. Where can I get a copy of the new DFS-H1-2146 form?

A. There are PDF and Word formatted versions on the Fund's website.

Pdf - Florida Title Insurance Premium Agent

Word - Florida Title Insurance Premium Agent

F4. What do I do with the form once it is completed?

A. A completed and signed copy must be provided to the buyer, seller and lender named in the transaction; and maintained in the title insurance agency file for at least five years. (Rule 69B-186.008(8), F.A.C.)

F5. How do I complete the Settlement Agent Certification box?

A. The settlement agent name is shown as either the attorney issuing the title insurance, the title agent issuing the title insurance, or the designee of either who is performing the closing. The "Florida License Number" line to the right of the settlement agent name can be left blank unless it is being signed by the DFS-licensed title insurance agent in which case the DFS-assigned license number for that agent shall be entered. In the case of an attorney or designee of either, no number is required.

The "Title Agency Holding Funds" field is completed with the name of the DFS-licensed title insurance agency issuing the title insurance policy and/or holding and disbursing escrow funds. In the event an attorney or law firm is issuing the policy and/or holding and disbursing trust account funds, The Fund best practice is to enter the name of the attorney or law firm on this line.

The "Florida License Number" line to the right of the title agency name is completed with the entry of the DFS assigned license number of the title agency. A Fund best practice is to enter the Florida Bar assigned license number of the attorney, but if a law firm is described then no number need be entered.

DoubleTime® will do this automatically once the settlement agent information has been completed for the transaction.

F6. How do I complete the table on the form?

A. The two columns on the left side of the table reflect the premium charges for the policies and endorsements, the distribution of the costs for those premiums between buyer and seller, and the subtotals and totals for each. The premium and endorsement charges come directly from page two of the Closing Disclosure form while you are responsible for calculating totals.

The two columns on the right side of the table reflect premium charges for the same policies and endorsements, the distribution, and totals. Here, however, the charges are based upon Florida's promulgated rates and these charges will come from your Rate Sheet or other resource you use to calculate Florida rates.

On the bottom line (Total All Policies (c + f)) a total which combines all buyer and seller costs is entered in the Closing Disclosure Amount side and similarly a total is entered on the Florida Premium side. These totals should be the same.

DoubleTime® will do this automatically as long as you complete the information on the Closing Disclosure before you access this form in the Documents module.

F7. Can I edit the form?

A. Yes, but carefully. The rule has very specific requirements and the form "meets all the requirements necessary to comply" (Rule 69B-186.008(9), F.A.C.). Tinkering with it might expose one unnecessarily to the risk of non-compliance.

F8. Are attorneys who do not issue title insurance through a title insurance agency required to follow the rule?

A. The rule is promulgated by the Department of Financial Services which does not have enforcement jurisdiction over licensed attorneys. However, The Fund feels that it is a best practice for attorneys to comply. We believe our members should strive to meet or exceed all the requirements imposed upon licensed title insurance agents.

F9. When must I use the new form?

A. You are never required to use the DFS-H1-2146 form. You are, however, required to comply with Rule 69B-186.008, F.A.C. Escrow Disbursements which went into effect on Oct. 28, 2015. The rule requires the comparison of inaccurate title insurance rates found on the CFPB's Closing Disclosure form with the actual promulgated rates required in Florida. The rule also requires the use of specific language and signatures for buyers, sellers and settlement agents in all transactions where title insurance will be issued. Use of this form assures compliance with the rule! It provides a "safe harbor"!

When using the form for cash, commercial real estate, and other transactions which do not involve the CFPB's Closing Disclosure, the table on the form may be left blank or crossed out.

F10. When issuing owner's and loan policies, what premium amount should we show on Schedule A for each policy?

A. The policies should reflect the correct premiums per Florida Law, not the distorted TRID rating shown on the Closing Disclosure.

F11. Why am I being asked to provide a preliminary HUD before a loan has been approved? Should I provide one?

A. Lenders are trying to gather information in order to deliver a Loan Estimate within three days after receipt of a loan application; many do not yet know how to gather the information they need so they are sticking with what they know and who they know - you and the good ole HUD-1 settlement statement! You should resist providing your information on that form because it will give the lender incorrect information about the title insurance premiums and you might get blamed.

Under appropriate circumstances (e.g. you have the contract and will be providing the settlement services), you should strive to provide your standard fees and title insurance premium information on a pro forma Closing Disclosure. This should not be difficult if you are in receipt of the contract and have opened and populated a DoubleTime® file with basic information. (You need not go to any

great effort to capture third-party information, but you should make lenders aware of any requirements you might anticipate.)

Lenders will need title insurance premium breakdowns using the new TRID formula; your settlement fee (don't forget to include the miscellaneous charges that you may have itemized in the past); and your title search charges (including municipal lien search, if you need one). Include an entry for "Title - Survey" if required for a Form 9 endorsement even if you do not know who will do the work or how much they will charge; lenders will have to come up with that estimate on their own. If your contract includes an association disclosure, let the lender know the amount stated on the disclosure for regular assessments.

If you have not begun to create a file, you may decide to provide a rudimentary "fee sheet." The goal is to provide enough information about your fees with the least amount of effort since you may not get the deal. Knowing the sales price and loan amount will allow you to provide the "TRID rates" for the policies and endorsements. If you will need a survey for a Form 9 endorsement, let the lender know that it will need to get an estimate since the survey will be required. Any more information than that will depend upon your knowledge of the transaction and your comfort level. Be prepared to be held to any estimates you provide so proceed with caution.

F12. Where do I put the $3.28 surtax on form DFS-H1-2146?

A. The surtax is not considered to be part of the premium and is not required to be disclosed on that form.

F13. Where should I send the $3.28 surcharge?

The surcharge should continue to be made payable to Old Republic National Title Insurance Company and mailed to The Fund at this address:
Attorneys' Title Fund Services, LLC
P.O. Box 628601
Orlando, FL 32862-8601