



TRID – Frequently Asked Questions

2015

**** Attached are some **Frequently Asked Questions** regarding TRID rules which Cornerstone Home Lending, Inc. has collected over the last year. We have diligently consulted our own subject matter experts and outside attorneys' opinions to sort through all of these new regulations to properly address these questions. You know as well as we do that over the last year the CFPB has adjusted some of the rules and brought further clarity to others. Please understand that these answers are correct as of the date indicated on the document. The CFPB may make further adjustment and clarification statements as time moves forward. We encourage you to remain alert and use the resources of your company to stay fresh on not only the TRID rules but all other regulations of our great industry.*

– Susan Barnhill, Vice President of Training

CORNERSTONE Home Lending, Inc.

TRID – Loan Estimate

Version 2015.10
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TRID Frequently Asked Questions

Loan Estimate

<p>If the product (FHA, VA, Conventional, Fixed, ARM, etc.) is not known, how do I disclose properly?</p>	<p>The definition of an application is clear. Product is NOT one of the six elements. The lender is required to provide the Loan Estimate in “good faith” when all six elements are received. The Loan Estimate should be based on the consumer’s choice of product or the lender’s recommendation of the best product for the consumer. If the product changes at a later time based on an acceptable changed circumstance, then the Loan Estimate may be revised. (Follow revision rules)</p>
<p>Can I disclose on a TBD property?</p>	<p>According to the CFPB guidelines the short answer is “yes”, however, due to the risks involved, best practices are to NOT disclose until ALL six elements of the application have been received. By disclosing the lender indicates it has all six elements. If the receipt of the missing item results in any addition of a fee, then the fee does not fall under an ACCEPTABLE changed circumstance and therefore may not be revised.</p>
<p>The LOS does not populate an application date until all the data fields are completed for the six application elements. If I am not ready to disclose, then I should simply withhold the data from the system and will not be required to disclose.</p>	<p>Absolutely NOT true. The CFPB does not state that until an LOS system triggers an application the lender is not bound to provide a Loan Estimate. The CFPB only indicates that if the lender has knowledge of the six elements, then an application is triggered. All KNOWN information should be entered into the LOS upon receipt.</p>
<p>I have name, SSN, income, loan amount and estimated value. The consumer states, “I am making an offer today on 123 New Street here in town.” Do I have all six elements for an application?</p>	<p>As crazy as it sounds, YES. A purchase contract is not required to have the subject property address. The good news is two-fold: 1) the lender has three business days to disclose, and 2) if the property value (sales price) does change, then the lender has an acceptable changed circumstance to revise the already issued Loan Estimate. (Follow revision rules)</p>
<p>The consumer indicates he is self-employed. Until I have his tax returns, there is no way I know what his income is, therefore, I do not have all six elements of the application and do not have to provide the Loan Estimate.</p>	<p>Not necessarily true. If the lender asks for the consumer’s monthly income and the consumer answers with a dollar amount, then the income element has been received. The lender may not REQUIRE the tax returns to verify the income prior to the issuance of the Loan Estimate. If the consumer volunteers the returns, they may be accepted by the lender. If the consumer does not provide the returns but has provided all six elements of an application, then the lender should move forward with the issuance of the Loan Estimate. If after the returns are received an acceptable changed circumstance occurs (e.g., product must be changed to approve the loan), then the lender may revise the Loan Estimate. (Follow revision rules)</p>
<p>The builder (or real estate agent) and the consumer would like to know if the consumer can qualify for a loan prior to writing a contract or even shopping. If I don’t have the subject property address yet, then I cannot qualify the consumer because the Loan Estimate must be issued before the Pre-Qualification or Approval Letter.</p>	<p>Not true. The CFPB has not removed the ability to pre-approve or pre-qualify a consumer before the Loan Estimate has been issued. The CFPB is very clear that the lender may not REQUIRE verifying documentation prior to the issuance of the Loan Estimate. It has also been made clear that until ALL six elements are received the Loan Estimate is not issued. The lender may inform the consumer of documentation which is reviewed for an approval or pre-qualification. If the consumer is willing to provide the documentation, then the lender is allowed to accept the documents and even provide to Underwriting for review.</p>



Electronic Consent - LE

The borrower gave me his email address. Does this count as electronic consent?

No. The borrower(s) must give specific permission to receive documentation such as disclosures via electronic methods.

My borrower was called out of town unexpectedly and has given his sister power of attorney. Do I need electronic consent from his sister to send the CD electronically?

It depends on when the borrower granted consent for electronic delivery. If the borrower's consent was given BEFORE the POA, then the sister does NOT have to sign a consent form. If the borrower's consent was given AFTER the POA, then the sister DOES have to sign a consent form.

The borrower gave consent for electronic delivery prior to the POA. Can the CD be sent to the POA via e-sign?

Unfortunately no. The e-sign method does not allow the POA to sign with all the required verbiage. The CD may be sent via EMAIL to the POA as long as all the permissions are granted properly.

Pre-qualifications and Approvals

In my market we have many entrepreneurs. Tax return reviews are a way of life! I have learned that what they think they make monthly and what the tax returns show are very different. I always require a self-employed borrower to furnish tax returns before I issue disclosures. It's a waste of time if I don't know the real income.

If the borrower has given you a monthly income amount through a conversation or through any other method (web, mail, fax, etc.), then you have the income amount according to the regulations – before and after October 3, 2015. No lender may REQUIRE any documentation from the consumer before issuing the Loan Estimate. If all six application items have been received, then the Loan Estimate and other disclosures must be furnished to the consumer.

The applicant called asking about an approval letter to take to the real estate office to cut down on the time between making an offer on a home and knowing if they even qualify for a home. Can I ask for the documentation necessary for an underwriting review?

Careful with this question! The CFPB has not eliminated the ability to issue an approval to the consumer without a property address. The lender could provide a checklist written or verbal of the items necessary for an underwriting review. If the consumer is willing to provide the items, then the lender may accept, verify, and underwrite them.

Warning: If the consumer shares a subject property address of a property he is interested in making an offer on, then the Loan Officer most likely has the sixth element of an application and is bound to disclose. Withholding the address from the LOS is not in compliance. Remember verifying documentation such as a sales contract is not required for the CFPB to consider the lender has the application information!

The borrower's credit report has an extended fraud alert. Can I require the borrower to provide identification to comply with the FACTA rules?

The person who pulls the credit report is required to follow the procedures as outlined by Compliance and the credit bureau regarding the fraud alert. Usually the alert includes a phone number to call for verification. ABSOLUTELY call the number to verify the identity. The next step is to have the consumer sign the appropriate form found in the Quest site of the intranet.

If identification is necessary to complete the process because no phone number is included in the alert, then yes, the lender may ask the consumer to show proof of identification.



Issuing the Loan Estimate

A complete file is transferred to my branch. The borrower wants to close as quickly as possible, so the Loan Estimate and other disclosures are provided immediately. If we can send the Closing Disclosure the very next day and obtain proof of receipt, then we only have to wait an additional three days to closing!

NO. The initial Loan Estimate has a 7-day waiting period regardless of when the Closing Disclosure is sent. The Closing Disclosure may be sent and receipted during the 7-day waiting period of the initial Loan Estimate, but the 7-day wait may not be shortened.

The subject property is in a community property state. The husband is a non-purchasing spouse, so do I have to send the Loan Estimate to him as well?

Actually, no. The Loan Estimate is slightly different from the initial TIL in this respect. The only people who must receive the Loan Estimate are those liable on the obligation. Remember, if the loan is a refinance, then the NPS must receive certain forms initially (e.g., the 12-day letter for example).

The rules are different for the CLOSING DISCLOSURE. Check the Closing Disclosure rules for details.

Revising the Loan Estimate

Five days prior to consummation the Borrower's hazard insurance policy is received. It is higher than amount on the Loan Estimate. The loan file must be corrected for underwriting approval, but does the Loan Estimate have to be revised?

No. Since the insurance is a prepaid item with no percentage tolerance limit, the correction may be reflected on the Closing Disclosure without revising the Loan Estimate – same as prior to October 3, 2015.

Five days prior to consummation the Borrower decides to waive escrows incurring a lender fee. Do I need to revise the Loan Estimate?

Not necessarily. IF the Closing Disclosure can be approved AND sent to the borrower(s) within THREE days of the CHANGE, then the new escrow waiver fee may be disclosed on the Closing Disclosure rather than the Loan Estimate. You MAY use the Loan Estimate – you must remember the waiting periods of the LE (7-day which may be reduced to FOUR from the signature date of the Disclosure Attestation.)

It is important to remember that if the CD is re-disclosed within the allotted three days from the ACCEPTABLE CHANGED CIRCUMSTANCE, then no cure is required.

If the Loan Estimate is sent before the loan is locked, does the Loan Estimate have to be re-disclosed when the loan is locked?

Yes. The rule is the same as prior to October 3, 2015. The lender has three days to re-disclose as with all other changed circumstances. This is a slight revision which occurred AFTER the CFPB first published the TRID rules. Initially, the rule stated the Loan Estimate had to be revised the same day as the lock date. The rule was adjusted early in 2015 to allow for the three days instead. The Interest Rate and Price Determination Agreement (or CO Lock Agreement) is still required as well.

The Loan Amount is lowered two weeks before consummation because the borrower received a bonus check. Do I have to re-disclose the Loan Estimate?

Not necessarily. It is the SAFEST thing to do, but since the change would not increase fees or increase the APR, then it could be disclosed on the Closing Disclosure rather than re-disclosing the Loan Estimate.

Of course don't forget to rerun AUS and send to Underwriting for the changes!

The real estate agent has decided to help the borrowers with a credit of \$500 from his commission. Do I have to re-disclose the Loan Estimate to show the credit?

Definitely not. Credits from the seller or agent only make the numbers for cash to close decrease. You are not required to re-disclose additional credits – even from the lender.

Of course don't forget to rerun AUS and send to Underwriting for the changes!



Fee Tolerances

The borrower purchased extra coverage with his hazard insurance. Will we have a cure tolerance at closing for the underestimate? Do I have to re-disclose the Loan Estimate?

No on both counts! The rules have not changed around prepaids. There are no percentage tolerance limits on them. Lenders are not required to re-disclose the Loan Estimate or cure any underestimate. The lender is obligated to give the initial estimate in “good faith”, which is our best guess for the market of the subject property for insurance (and taxes).

“Seller” and Other Fees

My market typically has the seller pay all the Transfer Tax. I missed the note in the contract that the buyer must pay half of the amount. I have already issued the Loan Estimate. Can I revise it for the Transfer Tax?

No. Oversight is never a changed circumstance for any fee. Even if you do not have a sales contract, the transfer tax should be on the Loan Estimate as if it will be paid in full by the borrower. There is no revision allowed to add at a later date. If you do have the contract and the seller is paying a portion of the transfer tax, then you are only required to show the amount paid by the borrower on the Loan Estimate.

My market always considers the OTP a seller fee. Do I have to include on the Loan Estimate?

Yes! The OTP is a service for the borrower. All fees paid by or on behalf of the borrower (and known by the lender at time of disclosure) must be on the Loan Estimate.

I have heard rumors that the Real Estate Commission must be reflected on the Loan Estimate. Is this true?

Depends on WHO is paying. If the borrower is paying any portion, then that portion must be on the Loan Estimate. If ALL is paid by the seller, then the Loan Estimate is not required to show it because the lender is not requiring the service.

Owner’s Title Policy

The builder has asked if the word “optional” can be removed from the Loan Estimate.

No. The question was posed to the advising attorney and it is a CFPB requirement that cannot be removed.

My borrower has said they don’t want an OTP. I have explained the deep discount, but still he doesn’t want it. Does he have to have it?

No. The OTP is an *option* for the borrower. Most choose to take it simply because the seller typically pays for it.

Do I still calculate a discounted premium on a refinance – no seller?

Maybe, maybe not. Typically, there is not an Owner’s Title Policy on a refinance because the borrower has held title since purchase – where typically the OTP was purchased. There is no need to purchase another OTP. The only policy would be the lender’s policy, so it would be shown at FULL cost.

If for some reason an OTP is purchased by the borrower, then any discount offered to the simultaneous policies is applied to the OTP as with purchases.



Credits

Am I required to show the seller credit on the LE? If the seller credit is KNOWN at the time of issuance of the Loan Estimate, then it should be shown on the Loan Estimate. It gives the consumer the best picture of the cash required at closing.

I have shown the seller credit on the initial LE. After disclosing the seller credit changes. Am I required to re-disclose the LE with the change? No, for a couple of reasons. When the seller credit increases or even decreases, no fees are added. The initial LE should have all the same fees before and after the change – so no re-disclosure is required for that purpose.

The second reason is that the LE does not have to be re-disclosed if the APR changes. Sounds odd, but true. The CD will indicate the change in the APR and has a mandatory waiting period which mimics the rules around the retired TIL – so no re-disclosure is required for a different APR.

TIP and Other Considerations

The Loan Estimate’s last page has the information regarding “in 5 years” which shows the principal, interest, mortgage insurance and loan costs which will be paid during that time. Is that the amount which is divided by the loan amount to calculate the TIP? No. The TIP only considers the amount of interest paid if EVERY SINGLE payment (all 360 of them!) is made. The total is divided by the loan amount to produce the TIP. The TIP is simply the TOTAL interest expressed as a percentage of the loan amount.

The Closing Disclosure

As the Closer, am I responsible to obtaining all the seller invoices – payoffs, warranties, etc.? No. The settlement agents are still responsible for the disbursement of funds. They are also responsible for the seller’s side of the CD which would include any third parties invoices which are to be paid.

Does the title/escrow company have to approve the CD before the Closer sends it to the borrower? YES. We want to make sure the CD is correct before it is sent to the borrower. That includes the accuracy of title fees, seller credits, commission credits, etc. Until title approves the CD, it should not be forwarded to the borrower.

If the application date is prior to October 3, 2015, then will the Closer prepare the HUD-1 in the same fashion as the CD? No. Applications prior to October 3, 2015 will use a HUD-1, TIL, and GFE. There is no Closing Disclosure. The settlement agent is responsible for creating the HUD-1. The workflow of the HUD-1 is the exact same as it has always been: settlement agent prepares – lender approves.

The title company is dragging its feet in sending me the fees needed to complete the CD. The timeline is quickly shrinking. Should I simply create the CD with the fees I have now and the title fees listed on the LE, send to the borrower, and just do a revision later? I think we may miss the consummation date if I don’t “receipt” the CD now! No. The Loan Estimate allows the lender to send the information it has at the time of issuance as long as it is estimated in “good faith”. The LE may not contain the exact fee amounts because they are not available at the time of issuance. The CD should be exact fee amounts based on receipts and other documentation.

If the title company (or escrow company) is holding up the issuance of the CD, then the Closer should contact Production and/or the Manager to help move things along.



Issuing the Initial Closing Disclosure

<p>If the loan is a refinance, is the consummation date the same as the funding date?</p>	<p>No. The consummation date is the date the borrower(s) sign the note. The funding date is when funds are disbursed.</p> <p>The confusing element is the receipt of the CD and the start of the rescission period. For the sending/receipt of the CD we must count back from the date the FIRST borrower signs the note. The rescission begins after ALL have signed the note. Be careful!</p>
<p>Because company's normal business days are Monday through Friday, we only count Monday through Friday (excluding federal holidays) when calculating the delivery of the CD.</p>	<p>No. It is confusing because the Loan Estimate's delivery IS based on the lender's normal business days. The CD is based on Monday through SATURDAY excluding federal holidays.</p> <p>We do have to consider our normal business days if the last possible day to deliver the CD falls on a Saturday. The last day for the company is then Friday because there would be no Closer available to prepare and deliver the CD on Saturday. Because we are open on some federal holidays, we must remember that the federal holiday does NOT count regardless!</p>
<p>The borrower asked that the CD be mailed because he will be out of town up to the closing date. I am sending in time for the Mailbox Rule to be followed. Since the borrower is not going to be able to send proof of receipt to me at least 3 days before consummation, am I okay?</p>	<p>YES! If the lender uses the Mailbox Rule (full six day wait) when sending the CD, then there is nothing the borrower is required to do prior to consummation. No proof of receipt is required.</p>
<p>In the CFPB guidelines it seems that only ONE person obligated on the loan must receive a copy of the CD on a purchase loan. So I only have to send the form to one email address?</p>	<p>Correct, we are required to provide the CD to only ONE borrower on a purchase (no rescission). That same ONE borrower may receipt the CD to reduce the waiting period.</p>
<p>Do I provide the CD to the seller within the same timeframe?</p>	<p>No. The CFPB clearly states that the settlement agent is responsible for providing the CD to the seller at least by the day of consummation.</p>
<p>The borrower's closing documents are mailed out by title for signature on Wednesday, and we fund on Friday. When does my prepaid interest begin? At Consummation date on Wednesday?</p>	<p>Prepaid interest is collected from funding or "disbursement" date. In this case prepaid interest would be calculated from Friday forward.</p>



Closing Disclosure Re-Disclosed

I (Closer) sent the preliminary CD to title for approval, but they found an error in the seller's credit amount. I had accidentally transposed a number. Do I now have to restart my waiting period?

No because actually the waiting period has not even begun. The waiting period does not start until the CD is delivered to the BORROWER. Until the title/escrow company and Production team has "approved" the CD, it is not sent to the borrower. You would definitely want to check the borrower's QUALIFYING cash to close and seller contribution – may impact approval depending on the direction!

The Real Estate Agent's license number is wrong. We did not discover it until the CD was sent to the borrower. We are 2 days from the consummation date. Are we allowed to correct the CD before consummation or do we wait until consummation?

It is always best to correct errors as soon as they are discovered. The contact information of each required party on page 5 of the CD must be correct. The Closer should correct now and re-disclose the CD to the borrower and settlement agent. There is no additional wait period required.

If the error is not discovered until the day of consummation (maybe at the closing table), then the Closer may send the corrected CD directly to the settlement agent and allow them to deliver to the borrower. The CFPB allows for this.

Messed up! We have to cure the credit report fee, and no one saw until the loan had funded. How many days do we have to refund the amount?

Sixty (60) days from CONSUMMATION – not from discovery. The lender is required to re-disclose the CD to the borrower within the same timeframe.

The borrower decided to waive escrows on the day AFTER they received the CD. The fee to do so is enough to increase the APR by more than .125%. What happens now?

Unfortunately, the CD must be re-disclosed to the borrower, and the wait period starts all over. The original consummation date may be forced to change. The new consummation date will depend on how quickly the proof of receipt is obtained. It may not occur less than three days from the NEW receipt date.

If the new CD is provided within three days of the acceptable changed circumstance, then the fee may be added without the need for a cure.

Title company called to say the seller's payoff changed causing a decrease in the seller's net. As the Closer, do I need to do anything?

Not really. The settlement agent is required to correct the seller's side and send it to the seller and all other appropriate parties including the lender. The borrower does not receive a copy if the seller statement is separate from the CD.

If the borrower receives the CD by mail (sent six days prior to consummation), does any re-disclosed CD have to be sent by mail as well?

Not necessarily. The borrower has a choice at every point of the process to receive the CD electronically, by courier, or even stop by the office and pick it up! There is no TRID rule stating each delivery method must be the same. The only regulation regarding delivery method is that the lender must have expressed permission to deliver electronically.

Delivery Methods

Borrower #1 wants to have the CD delivered by courier. Borrower #2 has granted permission for electronic delivery. Am I allowed to send the CD both ways?

It depends if it is a purchase or a refinance. If a purchase, then only ONE borrower must receive the CD. If trying to reduce the waiting period, then ONE must provide receipt. The CD may be sent via e-sign to the borrower who has agreed to electronic delivery.

On a refinance the transaction has a right of rescission, so EACH person who can rescind must receive the CD. If trying to reduce the waiting period then EACH must provide proof of receipt. The wait period is counted from the date of the LAST signature.

If the borrower wants the CD mailed, then does the Closer actually make sure the CD is stamped and mailed?

Absolutely! The Closer follows the proper steps in the LOS and then prepares the CD for mailing – envelope, stamp, etc.



Proof of Receipt

My borrower asked the CD be sent by courier to his office. He forgot to sign the CD. I have the courier receipt signed by the borrower though. Will that work as proof?

No. Only the signed and dated CD is acceptable proof of receipt.

The CD was sent using the Mailbox Rule because the borrower was on vacation. When he returned home, he signed and dated the CD. The date is the day before consummation! Can I ignore the proof of receipt?

Actually, no need to ignore! When a lender uses the Mailbox Rule, nothing more is required. If the lender waits the full six days, the TRID rules have been satisfied.

If the lender expected to wait the full six days and receives the signed CD on the fourth day of later, then there is no “extra” three days added to the wait because you have a “receipted” CD. Six days is the maximum wait.

The CD was re-disclosed after the first CD was properly “receipted”. Do I always have to have proof the re-disclosed CD was received?

Not necessarily. If the re-disclosed CD did not restart the waiting period, then no additional proof of receipt is required. If the waiting period IS restarted because one of the three reasons (change APR, product, prepayment penalty), then YES proof of receipt is required if desiring to reduce the NEW waiting period.