

TILA-RESPA Integrated Disclosures

By Jonathan W. Cannon, Christine Acree, and Brandy Hood*

INTRODUCTION

On December 31, 2013, the Bureau of Consumer Financial Protection (“CFPB”) published its long-awaited TILA-RESPA Integrated Disclosures Rule (“TRID Rule”),¹ combining the mortgage disclosures consumers receive under the Truth in Lending Act (“TILA”)² and the Real Estate Settlement Procedures Act (“RESPA”).³ For more than thirty years, the TILA and RESPA mortgage disclosures had been administered separately by the Federal Reserve Board and the U.S. Department of Housing and Urban Development (“HUD”), respectively. In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)⁴ transferred authority over TILA and RESPA to the CFPB and directed the CFPB to create “rules and model disclosures that combine the disclosures required under [TILA] and sections 4 and 5 of [RESPA] into a single, integrated disclosure for mortgage loan transactions covered by those laws.”⁵ Congress did not, however, amend TILA and RESPA provisions governing timing, responsibility, and liability for the disclosures, leaving it to the CFPB to resolve the inconsistencies.

The TRID Rule was originally scheduled to become effective on August 1, 2015.⁶ But, “[b]ecause of an administrative error on the Bureau’s part in complying with the Congressional Review Act (“CRA”) with respect to the TILA-RESPA Final Rule,” the CFPB was forced to push back the effective date.⁷ Even though

* Jonathan W. Cannon is counsel with BuckleySandler LLP in Los Angeles. Christine Acree is senior product counsel with Ellie Mae, Inc. in Irvine, California, and is the vice chair of the Housing Finance Subcommittee of the Consumer Financial Services Committee. Brandy Hood is an associate with BuckleySandler LLP in Washington, D.C.

1. Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 79730 (Dec. 31, 2013) (to be codified at 12 C.F.R. pts. 1024 & 1026) [hereinafter TRID Rule].

2. Pub. L. No. 90-321, 82 Stat. 146 (1968) (codified as amended at 15 U.S.C. §§ 1601–1667f (2012)).

3. Pub. L. No. 93-533, 88 Stat. 1724 (1974) (codified as amended at 12 U.S.C. §§ 2601–2617 (2012)).

4. Pub. L. No. 111-203, 124 Stat. 1376 (2010).

5. Dodd-Frank Act § 1032(f), 12 U.S.C. § 5532(f) (2012).

6. See TRID Rule, *supra* note 1, at 79732.

7. 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and Amendments; Delay of Effective Date, 80 Fed. Reg. 43911, 43911 (July 24, 2015).

the CFPB could have chosen a date as early as August 15, 2015, as the new effective date, the CFPB settled on Saturday, October 3, 2015.⁸

On June 3, 2015, CFPB Director Richard Cordray responded to requests from industry and members of Congress for delayed enforcement of the TRID Rule.⁹ The CFPB did not, as many had hoped, establish a “hold harmless” period during which the TRID Rule would be in effect but public and private enforcement would be limited. Instead, Director Cordray stated that he had spoken with other regulators to clarify “that [the CFPB’s] oversight of the implementation of the [TRID] Rule will be sensitive to the progress made by those entities that have squarely focused on making good-faith efforts to come into compliance with the Rule on time.”¹⁰ As noted in Director Cordray’s letter, this approach is consistent with the approach taken by the CFPB in early 2014 after other regulations implementing Title XIV of the Dodd-Frank Act took effect.¹¹ Director Cordray noted that, in the CFPB’s view, this approach “has worked out well.”¹²

Although the new disclosures, the Loan Estimate and the Closing Disclosure, are demonstrably more accessible for consumers than their predecessors,¹³ they have proven to be difficult to implement—despite the CFPB’s unprecedented efforts to help the industry implement the TRID Rule.¹⁴ These difficulties arise because the TRID Rule is often deceptively complex in that it implements many familiar concepts but applies higher, or slightly different, standards to them. These general disclosure requirements, as well as two key issues the industry has struggled to resolve, are discussed below.

THE LOAN ESTIMATE

The Loan Estimate is a three-page written disclosure¹⁵ that provides consumers with a good faith estimate¹⁶ of credit costs and key transaction terms and satisfies timing and delivery¹⁷ requirements in order to promote comparison shopping.¹⁸ The Loan Estimate combines the early TILA disclosure and the RESPA-required

8. *Id.*

9. See Letter from Director Richard Cordray, Consumer Fin. Prot. Bureau, to U.S. Representatives Andy Barr & Carolyn B. Maloney (June 3, 2015) (on file with *The Business Lawyer*) [hereinafter Cordray Letter]; see also *Know Before You Owe: You’ll Get 3 Days to Review Your Mortgage Closing Documents*, CONSUMER FIN. PROT. BUREAU, <http://www.consumerfinance.gov/blog/know-before-you-owe-youll-get-3-days-to-review-your-mortgage-closing-documents/> (last visited Oct. 8, 2015) (referencing this letter).

10. Cordray Letter, *supra* note 9, at 2.

11. *Id.*

12. *Id.*

13. See, e.g., KLEIMANN COMM’N GRP., INC., KNOW BEFORE YOU OWE: EVOLUTION OF THE INTEGRATED TILA-RESPA DISCLOSURES (July 9, 2012), <http://perma.cc/M3E5-9WMX>.

14. See, e.g., Cordray Letter, *supra* note 9, at 1–2 (describing the CFPB’s industry outreach efforts to assist in implementing the TRID rule).

15. See 12 C.F.R. § 1026.37 (2015); see also *id.* pt. 1026, app. H-24 (providing Loan Estimate Model Forms).

16. *Id.* § 1026.19(e)(3).

17. *Id.* § 1026.19(e)(1).

18. *Id.* §§ 1026.19(e), 1026.37; see also Jonathan W. Cannon & Christine Acree, *Survey of RESPA and TILA Developments—2014*, 70 BUS. LAW. 553, 554–57 (2015) (in the 2015 Annual Survey).

Good Faith Estimate.¹⁹ After receipt of an “application,”²⁰ the Loan Estimate must be delivered or placed in the mail within three business days and not less than seven business days²¹ before consummation of the transaction.²² If a mortgage broker receives a consumer’s application, either the creditor or the mortgage broker may provide the Loan Estimate.²³ If the mortgage broker provides the Loan Estimate, the creditor is responsible for making sure the Loan Estimate is accurate, but the mortgage broker is also obligated to comply with all relevant requirements of the TRID Rule.²⁴ Disclosures made on the Loan Estimate must be made in good faith and consistent with the best information reasonably available at the time the disclosure is made.²⁵

Generally, if the amount eventually “imposed on or paid by” the consumer exceeds the amount originally disclosed on the Loan Estimate, this increase would not be considered in good faith, regardless of whether the increase is later determined to be due to a technical error, a miscalculation, or an underestimation of a charge.²⁶ Fee amounts disclosed on the Loan Estimate are subject to a zero variance difference (meaning they cannot increase from the amount disclosed on the original Loan Estimate), unless the TRID Rule expressly provides that a different standard applies.²⁷ Fees in the zero percent variance category include fees paid to the creditor or mortgage broker or an affiliate of either, fees paid for services for which the consumer is not permitted to shop, transfer taxes, and lender credits.²⁸

Certain fees are allowed to increase, with limitations. These fees include recording fees and fees paid for third-party services for which the consumer is permitted to shop.²⁹ These fees are in the 10 percent aggregate variance category.³⁰

Other fees are required to be disclosed based on the “best information reasonably available” and are permitted to increase between the time they are disclosed on the Loan Estimate and when they are eventually charged to or paid by the consumer, as long as that standard is met.³¹ These fees include prepaid interest,

19. 12 C.F.R. § 1026.37 (2015); see also *TILA-RESPA Integrated Rule Implementation*, CONSUMER FIN. PROT. BUREAU, <http://www.consumerfinance.gov/regulatory-implementation/tila-respa> (last visited Oct. 7, 2015) (resources include readiness, compliance, and form guides, as well as samples and annotated forms).

20. 12 C.F.R. § 1026.2(a)(3) (2015) (noting that “application” now means submission of a consumer’s name, income, and social security number to obtain a credit report, as well as a property address, estimate of property value, and mortgage loan amount sought for purposes of obtaining an extension of credit, and no longer includes a seventh, catch-all provision).

21. *Id.* § 1026.2(a)(6) (providing that for a Loan Estimate, a general business day includes any day the creditor is open to the public for substantially all business purposes); *but cf. id.* (noting that for providing the Closing Disclosure and other purposes, a specific business day includes all calendar days, except Sundays and defined legal public holidays).

22. *Id.* §§ 1026.19(e)(1), 1026.37.

23. *Id.* § 1026.19(e)(1).

24. *Id.*; see also *id.* pt. 1026, supp. I, cmt. 1026.19(e)(1)(ii)-1.

25. *Id.* § 1026.19(e)(3).

26. *Id.*

27. *Id.*

28. *Id.*; see also *id.* pt. 1026, supp. I, cmts. 1026.19(e)(3)(i)-1, -5.

29. *Id.* § 1026.19(e)(3)(ii)(B).

30. *Id.* § 1026.19(e)(3)(ii).

31. *Id.* § 1026.19(e)(3)(iii).

property insurance premiums, amounts placed into escrow, fees paid to third-party service providers selected by the consumer and not on a list provided by the creditor, and fees paid for third-party services not required by the creditor, even if these fees are paid to affiliates.³²

Fees can decrease for all categories except lender credits, and fees may increase beyond the applicable variance only if a “permitted” change occurs.³³ Lender credits may increase but cannot decrease unless a “permitted” change occurs.³⁴

A permitted change occurs if a fee increases for one or more of the following reasons: a changed circumstance affecting settlement charges or eligibility,³⁵ a borrower-requested change, a rate lock causes interest-rate-dependent charges to increase, the Loan Estimate expires because the consumer did not indicate an intent to proceed within ten business days, or there was a delayed settlement on a construction loan (provided that special disclosures are included on the original Loan Estimate).³⁶ If there is a permitted change,³⁷ the Loan Estimate should be re-disclosed within three general business days of the date the creditor or broker received information sufficient to establish this change.³⁸

The Loan Estimate, like the Closing Disclosure, is a dynamic form such that, if a particular part of the form is inapplicable, that part is either left blank or does not appear at all.³⁹ Examples of dynamic form features include the adjustable payment (“AP”) and adjustable interest rate (“AIR”) tables.⁴⁰ Some of the principles incorporated in the design include using a minimal amount of text but focus more on the design of the form.⁴¹ Under this rule-based design, only limited modifications to the forms are allowed.⁴² The Loan Estimate also has specific formatting requirements. For example, sometimes rounding takes place at every

32. *Id.* § 1026.19(e)(3).

33. *Id.* pt. 1026, supp. I, cmt. 1026.19(e)(3)(i)-5 (defining and giving examples of lender credits); see also *id.* § 1026.19(e)(3)(iv).

34. *Id.* § 1026.19(e)(3)(iv); TRID Rule, *supra* note 1, at 79824 (codified at 12 C.F.R. § 1026.19(e)(3)(iv)) (stating that a “changed circumstance or borrower-requested change” may decrease lender credits).

35. Examples of these “changed circumstances” include the following: an extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or loan, information specific to the consumer or loan that the creditor relied on when providing the Loan Estimate but that was later found to be inaccurate or changed after the Loan Estimate was provided, new information specific to the consumer or loan that was not relied on when the Loan Estimate was provided but is discovered later, and changes affecting the creditworthiness or the value of the security. 12 C.F.R. § 1026.19(e)(3)(iv)(A)–(B).

36. *Id.* § 1026.19(e)(3)(iv).

37. *Id.*

38. See *id.* § 1026.19(e)(4)(i), (e)(3)(iv)(A); but see *id.* § 1026.19(e)(3)(iv)(D); pt. 1026, supp. I, cmt. 1026.19(e)(3)(iv)(D)-1 (when rate is locked, revised Loan Estimate must be provided within three business days after rate lock).

39. *Id.* § 1026.37 (containing format and design requirements throughout).

40. *Id.* § 1026.37(i), (j) (noting that the tables will appear dynamically based on loan terms, may appear independently of each other, and cannot be left blank, crossed through, or marked N/A).

41. See *id.* § 1026.37(o).

42. *Id.*

step in a calculation and sometimes only the final result is rounded.⁴³ When rounding is required, the number is rounded to the nearest whole dollar.⁴⁴

The TRID Rule explicitly spells out the Loan Estimate's required contents.⁴⁵ Page one of the Loan Estimate contains general information about the loan, such as property address,⁴⁶ loan type,⁴⁷ rate lock information,⁴⁸ the loan terms, information on projected payments, costs at closing, and a reference to the CFPB's website for general information and tools.⁴⁹

Page two of the Loan Estimate provides closing cost details.⁵⁰ On this page, fees are listed alphabetically, amounts are rounded, and fees are enumerated and subtotaled by category.⁵¹ Loan costs are enumerated in the left column of the page and consist of origination charges,⁵² services consumers cannot shop for,⁵³ services consumers can shop for,⁵⁴ and total loan costs.⁵⁵ Origination charges are itemized, and these charges include “[percentage] of Loan Amount (Points),” which are points paid to the creditor to reduce the interest rate, which must be itemized separately.⁵⁶ Other origination charges that must be enumerated include application fees, rate lock fees, direct broker compensation (paid by borrower), and loan level price adjustments not included in the rate.⁵⁷

Other costs are listed in the right column of the second page of the form and detail taxes and other government fees, prepaids, initial escrow payments made at closing, and other payments made at closing.⁵⁸ Prepaids include amounts to be paid by the consumer in advance of the first scheduled payment.⁵⁹ The initial escrow payment at closing⁶⁰ is the amount that the consumer will be expected to place into a reserve or escrow account at consummation⁶¹ to be applied to recurring periodic charges. Other costs are those not previously disclosed that the consumer is likely to pay and that the creditor is aware of when issuing the

43. See *id.* § 1026.37(o)(4)(i), (ii); see also *id.* pt. 1026, supp. I, cmt. 1026.37(o)(4)-2.

44. *Id.* § 1026.37(o)(4)(i).

45. See also *id.* pt. 1026, app. H-24(A) (providing Loan Estimate Model Form).

46. *Id.* § 1026.37(a)(6).

47. *Id.* § 1026.37(a)(11).

48. *Id.* § 1026.37(a)(13).

49. *Id.* § 1026.37(a)-(e).

50. *Id.* § 1026.37(f)-(g); pt. 1026, supp. I, cmts. 1026.37(f)-1 to (g)(8)-1.

51. *Id.* § 1026.37(f)-(g); pt. 1026, supp. I, cmts. 1026.37(f)-1 to (g)(7)-1.

52. *Id.* § 1026.37(f)(1).

53. *Id.* § 1026.37(f)(2) (examples include appraisal fee and credit report fee).

54. *Id.* § 1026.37(f)(3) (examples include pest inspection fee, survey fee, and title fees).

55. *Id.* § 1026.37(f)(4).

56. *Id.* § 1026.37(f)(1)(i).

57. See *id.* pt. 1026, supp. I, cmt. 1026.37(f)(1).

58. *Id.* § 1026.37(g)(1) (examples include recording fees and transfer taxes).

59. *Id.* § 1026.37(g)(2) (examples include a homeowner's insurance premium, mortgage insurance premium, prepaid interest, and property taxes).

60. *Id.* § 1026.37(g)(3).

61. *Id.* § 1026.2(a)(13) (defining “consummation” as occurring when the “consumer becomes contractually obligated on a credit transaction”).

Loan Estimate.⁶² Tables on page two also include calculating cash to close,⁶³ the AP table,⁶⁴ and the AIR table, if applicable.⁶⁵

Finally, page three of the Loan Estimate provides additional information about the loan and includes the names, identification numbers, and contact information for the creditor, mortgage broker, and individual loan officer.⁶⁶ A “Comparisons” section is designed to compare the cost of the loan to other loans in five years,⁶⁷ the APR for the loan,⁶⁸ and the total interest percentage for the loan.⁶⁹ Other requirements include providing required disclosures regarding appraisal, assumption, homeowner’s insurance, late payments, the possibility that the consumer may not be able to refinance the loan in the future, and servicing, as well as a disclosure regarding the consumer’s obligations upon receipt of the form.⁷⁰ Finally, the creditor may opt to include a signature line.⁷¹

THE CLOSING DISCLOSURE

Creditors are required to provide a Closing Disclosure to consumers for all closed-end consumer credit transactions secured by real property, instead of the final TILA disclosure and the HUD-1/HUD-1A form.⁷² The Closing Disclosure combines all the information previously provided on the TILA disclosure and the HUD-1/HUD-1A form into a single, five-page disclosure.⁷³ The first and second pages of the Closing Disclosure more precisely disclose the same information required on the first and second pages of the Loan Estimate, the third page of the Closing Disclosure requires a cash to close table comparing the amounts disclosed on the Loan Estimate as well as a summary of the borrower’s and seller’s transactions, and the fourth and fifth pages of the Closing Disclosure provide additional disclosures and contact information relating to the loan and real estate transaction.⁷⁴

A consumer also must receive the Closing Disclosure at least three business days before consummation.⁷⁵ The Closing Disclosure must reflect the actual terms of the credit and real estate transactions.⁷⁶ However, if the creditor does not yet know the actual terms of the transaction, it may then estimate any un-

62. *Id.* § 1026.37(g)(4).

63. *Id.* § 1026.37(h)(1).

64. *Id.* § 1026.37(i)(1)–(5).

65. *Id.* § 1026.37(j)(1)–(6).

66. *Id.* § 1026.37(k).

67. *Id.* § 1026.37(l)(1) (requiring that the table show principal, interest, mortgage insurance, and loan costs paid off over time).

68. *Id.* § 1026.37(l)(2).

69. *Id.* § 1026.37(l)(3). This is a new calculation showing the total amount of interest the borrower will pay over the loan term as a percentage of the total loan amount.

70. *Id.* § 1026.37(m)(1)–(6).

71. *Id.* § 1026.37(n).

72. *Id.* § 1026.19(f)(1).

73. See TRID Rule, *supra* note 1, at 79731.

74. 12 C.F.R. § 1026.38 (2015).

75. *Id.* § 1026.38(f)(1)(ii).

76. See *id.* § 1026.38; *id.* pt. 1026, supp. I, cmt. 1026.19(f)-1.

known items as long as it uses “the best information reasonably available.”⁷⁷ This “reasonably available” standard requires the creditor to act in good faith and “exercise due diligence in obtaining the information.”⁷⁸ Unfortunately, these standards do not permit creditors and other providers to simply rely on another transaction to develop an estimate but instead require a proactive determination based on the actual transaction at hand.⁷⁹

The CFPB recognized that information may change within the last few days before closing and sometimes even after closing. As a result, it also implemented requirements to provide a “corrected” Closing Disclosure in certain situations, including when disclosed information becomes inaccurate before consummation.⁸⁰ For example, if the creditor estimated the interest rate because it was never locked and the interest rate fluctuates after the Closing Disclosure is provided, the creditor must provide a corrected Closing Disclosure to the consumer at or before consummation.⁸¹ In addition, notwithstanding the requirement to provide a corrected Closing Disclosure, the consumer must be permitted to inspect the Closing Disclosure, which must be updated to reflect any changes known at the time of inspection, during the business day immediately preceding consummation.⁸²

A corrected Closing Disclosure also must be provided and a three-day waiting period applies if certain information in the Closing Disclosure becomes inaccurate before consummation. If any of the following items change before consummation, the creditor must not only provide a corrected Closing Disclosure, but it must also ensure that it is received at least three business days before consummation: the APR becomes inaccurate, as defined in Regulation Z;⁸³ the loan product changes, causing the “Product” information required on page one of the Closing Disclosure to become inaccurate; or a prepayment penalty is added.⁸⁴

The TRID Rule also requires corrected Closing Disclosures to be provided after consummation if settlement costs paid by the consumer change after consummation, a non-numerical clerical error is identified, or a tolerance violation is identified.⁸⁵

If the transaction involves a seller, then the settlement agent is responsible for providing a Closing Disclosure to the seller at or before consummation reflecting the actual terms of the seller’s transaction.⁸⁶ If a seller-paid amount changes

77. *Id.* pt. 1026, supp. I, cmt. 1026.19(f)(1)(i)-2.

78. *Id.*

79. *Id.* (stating that a creditor has not exercised due diligence if it discloses an estimate based on another transaction instead of requesting the actual cost of the lender’s title insurance policy from the title insurance company).

80. *Id.* § 1026.19(f)(2)(ii).

81. *Id.* § 1026.19(f)(2)(i).

82. *Id.*

83. *Id.* § 1026.19(f)(2)(ii); see *id.* § 1026.22 (defining the APR).

84. *Id.* § 1026.19(f)(2)(ii).

85. *Id.* § 1026.19(f)(2)(iii)–(v).

86. *Id.* § 1026.19(f)(4)(i)–(ii).

within thirty days of consummation, the settlement agent must deliver or place in the mail a corrected Closing Disclosure within thirty days after receiving information sufficient to establish that such event has occurred.⁸⁷

SPECIFIC IMPLEMENTATION CHALLENGES

The CFPB has issued interpretive guidance through a variety of methods since publishing the final TRID Rule.⁸⁸ Despite the unprecedented guidance, many questions remained at the time of implementation. Two are discussed below.

RESETTING TOLERANCES USING THE CLOSING DISCLOSURE

As noted, closing costs must be disclosed on the Loan Estimate in “good faith,” and many of the closing costs are subject to variances or “tolerances.”⁸⁹ This means that the estimated amounts are in good faith if the actual charge paid by or imposed on the consumer does not exceed the amount originally disclosed on the Loan Estimate by the applicable tolerance (i.e., zero or 10 percent in the aggregate) unless a “permitted” change occurs and the creditor “resets” the tolerances.⁹⁰

The creditor may “reset” the tolerances and charge more than originally disclosed by providing a revised Loan Estimate within three business days of receiving information sufficient to establish that a permitted change occurred.⁹¹ However, a revised Loan Estimate cannot be received on or after the date the Closing Disclosure is received, so the consumer must receive any revised Loan Estimate at least four business days before consummation (as the Closing Disclosure must be provided at least three business days before consummation).⁹²

The CFPB recognized that permitted changes may occur after the Loan Estimate deadline, so it created a narrow exception to allow creditors to reset tolerances by disclosing changes on the Closing Disclosure *only if* “there are less than four business days *between* the time the revised version of the disclosures is required to be provided under § 1026.19(e)(4)(i) [the “reset deadline,” which occurs three business days after receiving information sufficient to establish a permitted change] and consummation.”⁹³

This limitation creates an issue if the creditor provides the Closing Disclosure too early or if the closing is significantly delayed because the creditor will not be able to reset tolerances in such circumstances if there are too many days *between*

87. *Id.* § 1026.19(f)(4)(ii).

88. Most of these resources may be found on the CFPB’s website. See *TILA-RESPA Integrated Disclosure Rule Implementation*, CONSUMER FIN. PROT. BUREAU, <http://www.consumerfinance.gov/regulatory-implementation/tila-RESPA/> (last visited Oct. 8, 2015) (providing a compliance guide, a guide to forms, a closing factsheet, a disclosure timeline, an integrated loan disclosure form with samples, and a video series, along with supervision and examination materials).

89. 12 C.F.R. § 1026.19(e)(1)(i), (e)(3) (2015).

90. *Id.* § 1026.19(e)(3), (e)(4).

91. *Id.* § 1026.19(e)(4)(i).

92. *Id.* § 1026.19(e)(4)(ii).

93. *Id.* pt. 1026, supp. I, cmt. 1026.19(e)(4)(ii)-1 (emphasis added); *id.* § 1026.19(e)(4)(i).

consummation and the reset deadline.⁹⁴ For example, if there are three or fewer business days *between* consummation and the reset deadline, then the creditor may simply include the increased charge on the next Closing Disclosure it provides.⁹⁵ If there are four or more business days *between* consummation and the reset deadline, then it must reset tolerances using a revised Loan Estimate (if it has not already issued a Closing Disclosure) or it must not pass along the increased charge.⁹⁶

DISCLOSING TITLE INSURANCE COSTS

A creditor also must separately disclose the cost of the owner's and lender's title insurance policies in the Loan Estimate and Closing Disclosure.⁹⁷ Generally, the full premium rates for each respective title insurance policy must be disclosed.⁹⁸ However, where a special premium rate applies due to the simultaneous purchase of both policies, the creditor must follow a specific formula to calculate and disclose the cost of the owner's title insurance policy.⁹⁹ The formula requires the creditor to take the owner's title insurance premium, add the simultaneous issuance premium for the lender's coverage, and then deduct the full premium for the lender's coverage.¹⁰⁰ The creditor must disclose the resulting amount as the cost of the owner's title insurance policy and, for the lender's title insurance policy, the creditor must continue to disclose the lender's full premium rate, without the simultaneous purchase discount.¹⁰¹ This is true regardless of the title insurance company's filed rates or applicable state law.

However, the TRID Rule does not explain how the disclosures should be completed if the seller has agreed to pay for the owner's title insurance policy. In such circumstances, the creditor cannot simply shift the cost of the owner's title insurance policy to the seller using the TRID Rule's required calculations because the actual cost of the owner's title insurance policy is more than the disclosed amount. On the Loan Estimate, the solution is simple: the full amount of the seller's payment will simply be reflected as a seller credit in the Calculating Cash to Close table, just as any other payment by the seller for loan costs.¹⁰²

94. See Consumer Fin. Prot. Bureau, TILA-RESPA Integrated Disclosures (Aug. 26, 2014) (unofficial transcript of webinar at 20), http://www.bucklesandler.com/uploads/1082/doc/TILA-RESPA_Integrated_Disclosures_8-26-2014_Transcription.pdf [hereinafter Unofficial Transcript]; see also CONSUMER FIN. PROT. BUREAU, QUESTION INDEX—OUTLOOK LIVE WEBINARS ON TILA-RESPA INTEGRATED DISCLOSURES 4 (July 2015), http://www.consumerfinance.gov/ff/201505_cfpb_finex-resource-inventory.pdf (providing time stamps for questions asked at CFPB webinar covering TILA-RESPA disclosures; questions related to “[d]isclosures/redisclosure timing” begin at 36:30 for the Aug. 26, 2014, webinar).

95. See Unofficial Transcript, *supra* note 94, at 20; see also 12 C.F.R. pt. 1026, supp. I, cmt. 1026.19(e)(4)(ii)-1 (2015).

96. 12 C.F.R. pt. 1026, supp. I, cmt. 1026.19(e)(4)(ii)-1.

97. *Id.* § 1026.37(f)(2)(i), (f)(3)(i), (g)(4)(i).

98. *Id.*; see also *id.* pt. 1026, supp. I, cmt. 1026.37(g)(4)-1.

99. *Id.* pt. 1026, supp. I, cmt. 1026.37(g)(4)-2.

100. *Id.*

101. *Id.*

102. *Id.* § 1026.37(h)(1)(vi).

The solution for the Closing Disclosure is not as simple. However, CFPB staff advised during an official CFPB webinar that there are at least three ways in which the credit between the seller and consumer may be disclosed on the Closing Disclosure: the remaining credit may be applied toward any other title insurance costs, including the lender's title insurance cost; the remaining credit may be considered to be a general seller credit and disclosed as such in the Summaries of Transactions table on page three of the Closing Disclosure; or, the remaining credit may be shown on page three, specifying that it is a credit for title insurance under the purchase and sale contract.¹⁰³

103. Unofficial Transcript, *supra* note 94, at 22–24.