



# CFPB: The New Closing Process

Course Objective: *Relate the new CFPB Rules to what the real estate transaction process could look like after August 1, 2015 (CFPB revised date: October 3, 2015)*

## INTRODUCTION

LEARNING OBJECTIVE: *Identify the goals of the CFPB Closing Rule and distinguish between the Dodd Frank Act and the CFPB.*

Goal of the New Rule:

- Know before you owe –more knowledgeable consumer/borrower
- Easier to use mortgage disclosure forms
- Improve consumer understanding (key features, costs and risks of the loan for which buyer is applying for)
- Aid comparison shopping
- Prevent surprises at the closing table
- Eliminate predatory loan terms (high cost loans, prepayment penalties, unqualified buyers)
- Require industries to collaborate
- Allow consumer/borrower time to understand the agreed upon loan terms
- **Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010** - Signed into federal law by President Obama on July 21, 2010, it is an Act intended to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail,” to protect the American taxpayer by ending bailouts, and to protect consumers from abusive financial services practices.
- **Consumer Financial Protection Bureau (CFPB)** - Established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, it is an independent agency of the United States government responsible for consumer financial protection. Its mission is to protect consumers in regards to financial services and products, as well as to encourage fair practices within consumer financial markets.



## **SCOPE**

*LEARNING OBJECTIVE: Distinguish between affected and exempt transactions.*

**Effective Date:** mortgage applications received on OR after August 1, 2015

### **Transaction Types Affected:**

- Purchase money
- Refinance
- Less than 25 Acres
- Vacant-land
- Construction-only
- Timeshare

### **Transaction Types Exempt:**

- Reverse mortgages
- Home Equity Lines of Credit (HELOCs)
- Chattel-Dwelling/Mobile Home Only loans
- Creditors who originate less than 5 loans in a calendar year

## **DEFINITIONS**

*LEARNING OBJECTIVE: Define new key terms that will be commonly used after October 3, 2015.*

**Application** - Submission of a consumer's financial information for purposes of obtaining an extension of credit and that consists of the submission of the consumer's name, the consumer's income, the consumer's social security number, the property address, an estimate of the value of the property, and the mortgage loan amount sought.

**Business Day (Loan Estimate)** – A day on which the creditor's (Lender) offices are open to the public for carrying on substantially all of its business functions.



**Business Day (Closing Disclosure)** – All calendar days except Sundays and legal public holidays.

**Consummation** – The time that a consumer becomes contractually obligated on a credit transaction. (not necessarily the same as close of escrow).

**Close of Escrow** - The consummation of a real estate transaction, when the seller delivers title to the buyer in exchange for payment by the buyer of the purchase price. Pursuant to the Arizona Association of REALTORS® Residential Resale Real Estate Purchase Contract, close of escrow “shall occur when the deed is recorded at the appropriate county recorder’s office.”

**Changes Before Consummation Requiring A New Waiting Period** – Changes before consummation that cause the annual percentage rate to increase above 1/8 of a percent (and 1/4 of a percent for loans with irregular payments or periods), the loan product to change (i.e., fixed to conventional), or a prepayment penalty to be added, and that require the creditor to provide corrected disclosures with all changed terms so that the consumer receives them not later than the third business day before consummation of the loan.

**LE: Loan Estimate** – The form creditors are required to provide to consumers no later than the third business day after receipt of the consumer’s application for a mortgage loan, and that contains good-faith estimates of credit costs and transaction terms. The form integrates and replaces the RESPA Good Faith Estimate and the initial Truth in Lending disclosure.

**CD: Closing Disclosure** – A final written disclosure form that creditors must provide to consumers no later than three business days before consummation of the loan, and that reflects the actual terms and costs of the transaction. The form replaces the HUD-1 Settlement Statement and is often referred to by the acronym CD.

**Mail Delivery** – Conveyances not made in person, including email, that are deemed to have been received at the earlier of: (1) three business days after they are sent or placed in the mail; or (2) upon evidence of receipt. (often referred to as Mailbox Rule)

**Personal Delivery** – In person conveyances that are deemed immediately received.

**Electronic Delivery** - Methods of electronic conveyance, such as email, that are deemed to have been received at the earlier of: (1) three business days after they are sent; or (2) upon evidence of receipt.



**Intent to Proceed** – Oral or written communication by the borrower to the creditor after delivery of the Loan Estimate in which the borrower indicates their intention to move forward with the credit transaction. Silence is not indicative of intent to proceed.

**TIP** - An acronym standing for Total Interest Percentage, it is the total amount of interest the borrower will pay over the loan term as a percentage of the loan amount.

**Trigger:** Event that begins a timeline

## **ROLES**

*LEARNING OBJECTIVE: Distinguish the roles and responsibilities of the lender, escrow/title and REALTOR® in the closing process.*

### **CREDITOR (LENDER)**

- Collaborate with Settlement Service Provider to collect data
- Deliver the Loan Estimate and Closing Disclosure forms to Buyer
- Deliver Closing Disclosure form to Buyer
- Liable for the accuracy of information on the Loan Estimate and Closing Disclosure forms
- Increased communication and collaboration with the settlement service provider

### **SETTLEMENT SERVICE PROVIDER (ESCROW)**

- Increased communication and collaboration with the creditor (lender)
- Facilitate close of escrow
- Open Escrow

### **REALTORS®**

Buyers and sellers will be looking to the REALTOR® for general information about the new rules and forms involved in processing and closing their transactions. REALTORS® should be informed enough to:

- Verify creditor/lender has current purchase contract and any pertinent addenda



- Buyer's agent: obtain Closing Disclosure from buyer
- Review Settlement Statement – discuss with client timing and costs
- Direct clients to appropriate individuals for information for loan terms and closing information
- Know who will prepare the new Closing Disclosure and deliver the Closing Disclosure (coordinated communication strategies with lender and escrow agent)
- Be aware of whether closings will be impacted by disclosure delivery rules
- Identify any settlement fees that may need to be adjusted at closing
- Manage the escrow process, to ensure done in a timely manner

## **OVERVIEW OF THE TWO NEW FORMS**

*LEARNING OBJECTIVE: Identify what information is contained in the Loan Estimate and Closing Disclosure Forms.*

### **1) Loan Estimate Form (replaces TIL statement and GFE)**

- Provided to consumers within 3 business days after submission of loan application
- Provides summary of key loan terms and estimates of loan and closing costs
- Triggered by Loan Application

#### Loan Estimate Form Contains:

First Page (type of loan, payments, what cash is required)

- Loan terms – loan amount, interest rate, monthly P&I, prepayment penalty, balloon payment
- Projected payments
- Escrow information/Impounds
- Total estimated costs
- Closing costs
- Cash to close

Second Page (details of the costs; these numbers will appear on the closing disclosure form)



- Estimated settlement fees
- Cash to close, including credits, escrow, and down payment
- Adjustable payment and interest rate tables
- Note: all costs related to title start out with the word “title”

Third Page: (specifics: terms, comparison of the specific loan, costs over life of the loan broken out)

- Comparisons, including APR and total amount of interest
- Other disclosures – appraisal, assumption, servicing transfer
- Borrower acknowledgement and signature (not required)
- From acknowledgement of receipt of the Loan Estimate, consummation is a minimum of 7 days

## 2) Closing Disclosure Form (replaces TIL statement and HUD-1 Settlement Statement)

- Received by consumers 3 business days before consummation
- Provides detailed accounting of transaction
- Note: all of the seller information will most likely not be filled in on this form
- In most cases, the lender will fill out this form in collaboration with the settlement company/escrow

### Closing Disclosure Form Contains:

First Page: (Same as first page of Loan Estimate)

- Loan terms – loan amount, interest rate, monthly P&I, prepayment penalty, balloon payment
- Projected payments
- Escrow information
- Total estimated costs
  - Closing costs
  - Cash to close

Second Page: (specifics of the cost of the loan)

- Closing cost details



- All loan costs and other costs paid by borrower, seller and other parties
- Similar to current page 2 of HUD-1

Third Page: (Total closing costs from the Loan Estimate, all considerations)

- Calculating cash to close table
  - Similar to table on page 2 of Loan Estimate
  - Requires comparison to information on Loan Estimate
- Summaries of borrower and seller transaction
  - Similar to current page 1 of HUD-1

Fourth Page: (similar to what you see on the bottom on page 3 of the HUD1 and TIL)

- Loan disclosures
  - Assumption
  - Demand feature
  - Late payment
  - Negative amortization
  - Partial payments
  - Security interest
  - Escrow account
  - Adjustable payment and interest rate tables
  - But, only if applicable to the transaction

Fifth Page:

- Loan calculations
  - Total of payments
  - Finance charge
  - Amount financed
  - APR
  - Total interest percentage
- Other disclosures
  - Appraisal (if applicable)



- Contract details
- Liability after foreclosure
- Refinance
- Tax deductions
- Contact information (real estate agents and brokerage – including license numbers)
- Signature lines (but not required)

## **MOCK SCENARIO**

*LEARNING OBJECTIVE: Interpret when and how the new forms and timelines will guide the transaction process.*

BUYERS Michael Jones and Mary Stone have decided that it is time for them to own a home of their own. To begin the process, on **Monday, July 27, 2015**, BUYERS Mr. Jones and Ms. Stone contact a loan officer at Ficus Bank to determine whether they can qualify for a mortgage loan, and if so, for what amount. After verbally providing information to the loan officer, Ficus Bank emails BUYERS Mr. Jones and Ms. Stone a Pre-Qualification Form stating that they have been pre-qualified for a conventional loan up to \$200,000.

On **Saturday, August 1, 2015**, BUYERS Mr. Jones and Ms. Stone contract with SELLERS Steve Cole and Amy Doe to purchase the real property located at 456 Somewhere Ave., Anytown, ST, 12345.

The BUYERS' offer is submitted for \$180,000, with \$10,000 earnest money.

As indicated on page 1 of the Loan Estimate Form, the Buyers are seeking a 30 year fixed rate conventional loan from Ficus Bank. The parties would like to close escrow on Thursday, October 29, 2015, as stated on line 18 of the Residential Resale Real Estate Purchase Contract. The buyers are relocating to Arizona and will not be in Arizona prior to October 29<sup>th</sup>.

To secure a loan, BUYERS Mr. Jones and Ms. Stone complete a loan application, which is received by the creditor (Lender) Ficus Bank, on **Monday, August 3, 2015**.

(NOTE – The creditor is not open for business on Saturdays.) Along with the loan application is a request from BUYERS Mr. Jones and Ms. Stone that Ficus Bank complete and convey a Loan Status Update form.





The BUYERS open escrow on August 3<sup>rd</sup>. A copy of the contract is sent to the creditor (Lender) by the Buyer. Title insurance is ordered by settlement provider (Escrow).

**August Calendar Snippet**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 Application received by Creditor/Lender. Escrow opened	4	5	6	7	8
9	10	11	12	13	14	15

Discussion: Will a HUD-1 Settlement Statement be used for this transaction or a Closing Disclosure Form?

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Discussion: What information must the loan application contain?

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Discussion: For purposes of providing the Loan Estimate, how is a “business day” defined?

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Discussion: What is the creditor’s deadline for delivering or placing in the mail the Loan Estimate?

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**Tuesday, August 4, 2015** – Ficus Bank emails a completed Loan Status Update to the BUYERS who sign the Loan Status Update on line 40 of the LSU. The buyer’s agent forwards the LSU to the seller’s agent.

**August Calendar Snippet**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 Application received by Creditor/Lender. Escrow opened	4	5	6	7	8
9	10	11	12	13	14	15

Discussion: By what date must the BUYERS convey a completed Loan Status Update to the sellers?

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Discussion: How are days calculated in Residential Resale Real Estate Purchase Contract?

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**Thursday, August 6, 2015** – Creditor (Lender) places the Loan Estimate in the mail to the BUYERS.

**August Calendar Snippet**



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6 Loan Estimate placed in mail.	7	8
9	10	11	12	13	14	15

Discussion: What is the first day that consummation can occur?

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Discussion: For purposes of calculating when consummation can occur, how is a “business day” defined?

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Discussion: Is consummation a LE term or a CDF term?

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**Tuesday, August 11, 2015** – The BUYERS receive the Loan Estimate and indicate their intent to proceed by contacting their creditor (lender)

Loan Estimate form reflects Page 1: Sale price of \$180,000, a 30 year Conventional loan, interest rate of 3.875, no rate lock OR Prepayment penalty. Projected payments include property taxes and Homeowner’s Insurance.

Page 2: .25 points. \$10,000 deposit, no seller credits, estimated cash to close of \$16,054

Page 3: creditor (Lender) plans to transfer servicing of the loan



### August Calendar Snippet

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
2	3	4	5	6	7	8
9	10	11 Consumer receives Loan Estimate  Consumer indicates Intent to Proceed with transaction	12	13	14	15

Discussion: By signing page 3 of the Loan Estimate form – is that an indication of intent to proceed?

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**Thursday, August 13, 2015** – Appraisal ordered by creditor (Lender)

**Friday, August 28, 2015** – Creditor (Lender) learns the property tax record information provided by the Buyers that the Creditor/Lender relied on when providing the Loan Estimate does not match.

### August Calendar Snippet

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
9	10	11	12	13 Appraisal ordered by Creditor/Lender	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28 Creditor/Lender learns new information	29

Discussion: Must the creditor (Lender) issue a revised Loan Estimate?

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Discussion: What is the last day the creditor (Lender) can issue a revised Loan Estimate?

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**Friday, September 4, 2015** – Appraisal provides a property value resulting in a loan-to-value ratio **higher** than 90%. (referenced on LE Page 1) which changes the PMI premium.

**September Calendar Snippet**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4 Appraisal received by Creditor/Lender. LTV now exceeds 90%	5
6	7 HOLIDAY - LABOR DAY	8	9	10	11	12

Discussion: Must the creditor (Lender) issue a revised Loan Estimate?

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Discussion: What is the last day for the creditor (Lender) to issue a revised Loan Estimate due to increased LTV?

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Discussion: Must the BUYER reissue an Intent to Proceed upon receipt of a new Loan Estimate?

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Discussion: Where on the Loan Estimate is the existence of mortgage insurance reflected?

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**Monday, September 7, 2015 – Labor Day.**

**September Calendar Snippet**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7 HOLIDAY - LABOR DAY	8	9	10 %	11	12

Discussion: Is Labor Day a legal public holiday?

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**Tuesday, September 22, 2015** – An updated credit report received by the creditor (Lender) showed a changed credit score, triggering a loan-level price adjustment (LLPA).

**September Calendar Snippet**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
13	14	15	16	17	18	19
20	21	22 Updated credit report obtained showing a changed credit score. LLPA triggered.	23	24	25	26

Discussion: Must the creditor (Lender) issue a revised Loan Estimate?

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Discussion: What is the last day the creditor (Lender) can issue a revised Loan Estimate for the addition of any charges or changes to loan terms due to change in credit score?

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**Monday, October 5, 2015** – A rate lock is requested by the BUYERS.

**Tuesday, October 6, 2015** – Rate lock agreement executed by creditor (lender) – 3.875% (page 1 of Loan Estimate Form)

**October Calendar Snippet**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5 Rate lock requested by Consumer/Buyer	6 Rate lock agreement executed by Creditor/Lender	7	8	9	10

Discussion: Must the creditor (Lender) issue a revised Loan Estimate?

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Discussion: By what date must the Lender issue the revised Loan Estimate?

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Discussion: If delivering Closing Disclosure Form by mail, and assuming that the parties want to consummate and close on Thursday, October 29th, when must the creditor (Lender) place the document in the mail?

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Discussion: Whether sent by mail, email or overnight delivery, and assuming that the parties want to consummate and close on Thursday, October 29th, by what date must the Consumer (Buyer) receive the Closing Disclosure Form?

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Discussion: If Closing Disclosure is emailed on Monday, October 26th, can the parties consummate and close escrow on Thursday, October 29th?

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Discussion: For purposes of providing the Closing Disclosure, how is a “business day” defined?

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**Friday, October 23, 2015** – Creditor (Lender) sends the Closing Disclosure to the BUYERS via overnight delivery.

**October Calendar Snippet**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
18	19	20	21	22	23 Creditor/Lender sends Closing Disclosure by overnight delivery	24
25	26	27	28	29 Loan Consummation (Note & Deed)  CLOSING DATE	30	31



Discussion: Let's say that the BUYERS receive and sign for the overnight delivery of the Closing Disclosure on Saturday, October 24th. When is the earliest that they can consummate the loan and close escrow?

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Discussion: If consummating the loan and closing on Thursday, October 29th, by what date must the Consumer/Buyer acknowledge receipt of the Closing Disclosure?

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**Monday, October 26, 2015** – Listing Agent and Buyer's Agent receive and review the Closing Disclosure Form.

**October Calendar Snippet**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
18	19	20	21	22	23	24
25	26 Consumer must receive Closing Disclosure	27	28	29 Loan Consummation (Note & Deed)  CLOSING DATE	30	31

Discussion: **HYPOTHETICAL ONE** – On Monday, October 26th, Listing Agent reviews Closing Disclosure and discovers that an assessment was to be paid in full by the Seller, but instead, it was prorated and charged to the Buyer.

Does this change trigger the need for a revised Loan Estimate?

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Does this trigger the need for a corrected Closing Disclosure form?

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Will issuance of a corrected Closing Disclosure Form necessitate an additional three-day waiting period and therefore delay the close of escrow?

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Discussion: **HYPOTHETICAL TWO** – On Monday, October 26th, the loan is changed from a fixed rate to an adjustable rate.

Does this trigger the need for a corrected Closing Disclosure form?

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Will issuance of a corrected Closing Disclosure Form necessitate an additional three-day waiting period and therefore delay the close of escrow?

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Can the BUYERS waive the additional three-business day waiting period?

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If the loan product changes from a fixed interest rate to an adjustable rate, where would this be reflected on the Closing Disclosure?

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Does the Buyer need to notify the Seller of the change in the loan program and financing terms?

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**Tuesday, October 27, 2015** – During a walkthrough, two days before consummation, a broken dishwasher and air conditioner is discovered. As a result, the seller agrees to credit the buyer \$2500 via an Addendum to the Contract, which the Buyer provides to the Creditor (Lender).

**October Calendar Snippet**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
18	19	20	21	22	23	24
25	26	27 Walkthrough shows dishwasher and AC is broken  Seller credit for broken dishwasher provided in Addendum to Purchase Contract	28	29 Loan Consummation (Note & Deed)  CLOSING DATE	30	31

Discussion: In light of this seller credit, must a new Closing Disclosure be issued?

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Discussion: Will the new Closing Disclosure trigger a new three-day waiting period?

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Discussion: HYPOTHETICAL – Closing Disclosure is delivered and received by the Consumer (Buyer) on Wednesday, October 28th. What is the earliest date on which the loan can be consummated?

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What is the earliest date on which close of escrow can occur?

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**Thursday, October 29, 2015** – Creditor (Lender) issues a corrected Closing Disclosure to the BUYERS reflecting the seller credit. THE LOAN IS CONSUMMATED AND THE PARTIES CLOSE ESCROW.

**Friday, October 30, 2015** – The recording fees collected were \$100 more than needed when the documents are presented for recording after consummation.

**October Calendar Snippet**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
18	19	20	21	22	23	24
25	26	27	28	29	30	31
				Loan Consummation (Note & Deed)  CLOSING DATE		



Discussion: Can the title company (aka the recording office) refund \$100 to the BUYERS?

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Discussion: Even though escrow has closed, must the creditor provide the BUYERS with a corrected Closing Disclosure?

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Discussion: By what date must the creditor deliver or place in the mail a corrected Closing Disclosure showing the decrease in the transfer taxes?

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## **REFERENCE: Additional Definitions**

**Business function test** - Activities that indicate that the creditor (Lender) is open for substantially all of its business functions which includes the availability of personnel to make loan disbursements, to open new accounts, and to handle credit transaction inquiries. Activities that indicate that the creditor is not open for substantially all of its business functions include a retailer's merely accepting credit cards for purchases or a bank's having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

**Closed-end Credit – Definition according to CFPB:** Under, 12 CFR 1026.2(a)(10), it is defined as “consumer credit other than ‘open-end credit’ as defined in this section.” 12 CFR 1026.2(a)(20) defines open-end credit as “consumer credit extended by a creditor under a plan in which: (1) The creditor reasonably contemplates repeated transactions; (2) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (3) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.”

**Closed-end Credit – Definition according to AAR:** Consumer credit extended for a specific purpose, for a specific amount, and for a specific period of time. It is the opposite of revolving credit.

**Close of Escrow** - The consummation of a real estate transaction, when the seller delivers title to the buyer in exchange for payment by the buyer of the purchase price. Pursuant to the Arizona Association of REALTORS® Residential Resale Real Estate Purchase Contract, close of escrow “shall occur when the deed is recorded at the appropriate county recorder’s office.”

**Consumer** – A credit card holder or natural person to whom consumer credit is offered or extended.

**Consumer Credit** - Credit offered or extended to a consumer primarily for personal, family, or household purposes.

**Dwelling** - A residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

**Escrow:** A depository for all monies, instructions and documents necessary for the purchase of real property.



**Issue** – To deliver the applicable disclosure document.

**Legal Public Holidays** – New Year’s Day, the Birthday of Martin Luther King, Jr., the Birthday of George Washington (aka Presidents’ Day), Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

**TRID** – An acronym standing for TILA RESPA Integrated Disclosure, it refers to rules effective August 1, 2015 that apply to most closed-end consumer credit transactions secured by real property