Consumer Financial Protection Bureau

TILA-RESPA Integrated Disclosure FAQs

The questions and answers below pertain to compliance with the TILA-RESPA Integrated Disclosure Rule (TRID or TRID Rule).

Corrected Closing Disclosures and the Three Business-Day Waiting Period before Consummation

QUESTION 1:

If there is a change to the disclosed terms after the creditor provides the initial Closing Disclosure, is the creditor required to ensure the consumer receives a corrected Closing Disclosure at least three business days before consummation?

ANSWER (UPDATED 1/25/2019)**:**

It depends on the type of change. As discussed below, there are three types of changes that require a creditor to ensure that the consumer receives a corrected Closing Disclosure at least three business days before consummation. For other types of changes, a creditor is not required to ensure that the consumer receives a corrected Closing Disclosure at least three business days before consummation, but is required to ensure that the consumer receives a corrected Closing Disclosure at or before consummation.

A creditor must ensure that a consumer receives an initial Closing Disclosure no later than three business days before consummation. 12 CFR § 1026.19(f)(1)(ii)(A). If the disclosed terms change after the creditor has provided the initial Closing Disclosure to the consumer, the creditor must provide a corrected Closing Disclosure to the consumer. Unless the change is

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one of the three types of changes discussed below, it is sufficient if the consumer receives the corrected Closing Disclosure at or before consummation. 12 CFR § 1026.19(f)(2)(i). This means that, for most types of changes, the creditor can consummate the loan without waiting three business days after the consumer receives the corrected Closing Disclosure.

However, the creditor must ensure that a consumer receives the corrected Closing Disclosure at least three business days before consummation of the transaction if: (1) the change results in the APR becoming inaccurate; (2) if the loan product information required to be disclosed under the TRID Rule has become inaccurate; or (3) if a prepayment penalty has been added to the loan. 12 CFR § 1026.19(f)(2)(ii). Any of these three types of changes triggers a new three business-day waiting period, and the creditor must wait three business days after the consumer receives the corrected Closing Disclosure to consummate the loan.

More information on the timing requirements for providing initial Closing Disclosures and corrected Closing Disclosures is available in Sections 11 and 12 of the TILA-RESPA Rule Small Entity Compliance Guide.

QUESTION 2:

Is a creditor required to ensure that a consumer receives a corrected Closing Disclosure at least three business days before consummation if the APR decreases (i.e., the previously disclosed APR is overstated)?

ANSWER (UPDATED 1/25/2019)**:**

The answer depends on whether the overstated APR that was previously disclosed on the Closing Disclosure is accurate or inaccurate under Regulation Z. If the overstated APR is accurate under Regulation Z, the creditor must provide a corrected Closing Disclosure, but the creditor is permitted to provide it at or before consummation without a new three business-day waiting period. 12 CFR § 1026.19(f)(2)(i). If the overstated APR is inaccurate under Regulation Z, the creditor must ensure that a consumer receives a corrected Closing Disclosure at least three business days before the loan's consummation (i.e., the inaccurate APR triggers a new three-business day waiting period). 12 CFR § 1026.19(f)(2)(ii).

A disclosed APR is accurate under Regulation Z if the difference between the disclosed APR and the actual APR for the loan is within an applicable tolerance in Regulation Z, 12 CFR § 1026.22(a). For transactions secured by real property or a dwelling, Regulation Z includes several tolerances that might apply, including a tolerance whereby the disclosed APR is considered accurate if it results from the disclosed finance charge being overstated. See 12

CFR § 1026.22(a)(4). For example, if the APR and finance charge are overstated because the interest rate has decreased, the APR is considered accurate. Thus, the creditor may provide the corrected Closing Disclosure to the consumer at consummation, and is not required to ensure that the consumer receives the corrected Closing Disclosure at least three business days before consummation.

Additional information related to APR accuracy is available in the Federal Reserve's Consumer Compliance Outlook, First Quarter 2011 available at: www.consumercomplianceoutlook.org/2011/first-quarter/mortgage-disclosure-improvement-act/.

QUESTION 3:

Does Section 109(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act affect the timing for consummating a transaction if a creditor is required to provide a corrected Closing Disclosure under the TRID Rule?

ANSWER (UPDATED 1/25/2019)**:**

No. Section 109(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (2018 Act) did not change the timing for consummating transactions if a creditor is required to provide a corrected Closing Disclosure under the TRID Rule.

Section 109(a) of the 2018 Act, which is titled "No Wait for Lower Mortgage Rates," amends Section 129(b) of the Truth in Lending Act (TILA). TILA Section 129(b) governs when certain disclosures must be provided for high cost mortgages and the waiting periods for consummating a transaction after the creditor has provided those high cost mortgage disclosures. 15 U.S.C. § 1639. For more information on high cost mortgages, see Regulation Z, 12 CFR §§ 1026.31, .32, and .34.

As discussed in the FAQs above, if the APR disclosed pursuant to the TRID Rule becomes inaccurate, the creditor must ensure that a consumer receives the corrected Closing Disclosure at least three business days before consummation of the transaction. 12 CFR § 1026.19(f)(2)(ii). This requirement arises from TILA Section 128, 15 U.S.C. § 1638, and is separate and distinct from the waiting period requirement in TILA Section 129(b). Therefore, Section 109(a) of the 2018 Act did not create an exception to the waiting period requirement under TILA Section 128, and does not affect the timing for consummating transactions after a creditor provides a corrected Closing Disclosure under the TRID Rule.

However, as noted in the FAQ above, an overstated APR is not inaccurate if it results from the disclosed finance charge being overstated, and a creditor is not required to provide a new three-business day waiting period in these circumstances. Thus, if the disclosed APR decreases due to a decrease in the disclosed interest rate, a creditor is not required to provide a new three-business day waiting period under the TRID Rule.

Model Forms

QUESTION 1:

Does a creditor's use of a model form provide a safe harbor if the model form does not reflect a TRID Rule change finalized in 2017?

ANSWER (UPDATED 1/25/2019)**:**

Yes. As the Bureau noted in finalizing the 2017 changes to the TRID Rule, a creditor is deemed to be in compliance with the disclosure requirements associated with the Loan Estimate and Closing Disclosure if the creditor uses the appropriate model form and properly completes it with accurate content. 82 *Federal Register* 37,761-62. See also 15 U.S.C. § 1604(b).

Appendix H to Regulation Z includes blank model forms illustrating the master headings, headings, subheadings, etc., that are required by Regulation Z, 12 CFR §§ 1026.37 and 1026.38. These blank model forms for the Loan Estimate are H-24(A) and (G) and H-28(A) and (I). For the Closing Disclosure, they are H-25(A) and (H) through (J), and H-28 (F) and (J).

Appendix H to Regulation Z also includes non-blank model forms. These non-blank model forms for the Loan Estimate are H-24(B) through (F) and H-28(B) through (E). For the Closing Disclosure, they are H-25(B) through (G) and H-28(G) and (H).

To the extent that the appropriate model form is properly completed with accurate content, the safe harbor is met. The safe harbor applies even if the model form does not reflect the changes to the regulatory text and commentary that were finalized in 2017.

For example, the regulatory text provides that the percentage amount required to be disclosed on the Loan Estimate line labeled "Prepaid Interest (___ per day for __ days @__ %)" is disclosed by rounding the exact amount to three decimal places and then dropping any trailing zeros that occur to the right of the decimal point. 12 CFR § 1026.37(g)(2)(iii) and (o)(4)(ii). However, on page 2 of model form H-24(C), section F, the interest rate disclosed on the line for

prepaid interest includes two trailing zeros that occur to the right of the decimal point. Thus, a creditor could claim the safe harbor by disclosing the interest rate on the "Prepaid Interest" line by including two trailing zeros, or otherwise could comply with § 1026.37(o)(4)(ii) by rounding the exact amount to three decimal places and dropping any trailing zeros that occur to the right of decimal point. For example, assuming that the interest rate for the transaction being disclosed is four percent, the creditor could claim the safe harbor by disclosing "4.00%" (consistent with the model form) although it also could disclose "4%" (consistent with the regulatory text and commentary).

Construction Loans

QUESTION 1:

Are construction-only loans or construction-permanent loans covered by the TRID Rule?

ANSWER (UPDATED 5/31/2019)**:**

Yes, most closed-end consumer mortgage loans to finance home construction that are secured by real property are covered by the TRID Rule. 12 CFR § 1026.19(e)(1)(i).

Both construction-only loans (i.e., usually shorter term loans with several fund disbursements where the consumer pays only accrued interest until construction is completed) and also construction-permanent loans (i.e., construction loans that convert to permanent financing once construction is completed in which the loan amount is amortized just as in a standard mortgage transaction) can be covered by the TRID rule if the coverage requirements are met. Comment 17(c)(6)-2. Additionally, both initial construction and subsequent construction can be covered by the TRID Rule. Comment 17(c)(6)-2.

Generally, a loan, including a construction-only and construction-permanent loan, is covered by the TRID Rule if it meets the following coverage requirements:

- is made by a creditor as defined in § 1026.2(a)(17);
- is secured in full or in part by real property (a construction loan may be secured by both real and personal property) or a cooperative unit;
- is a closed-end, consumer credit (as defined in § 1026.2(a)(12)) transaction;
- is not exempt for any reason listed in § 1026.3; and
- is not a reverse mortgage subject to § 1026.33.

More information on the coverage of the TRID Rule and disclosing Construction Loans is available in Section 4 and Section 14, respectively, of the TILA-RESPA Rule Small Entity Compliance Guide.

QUESTION 2:

Are there special disclosure provisions for construction-only or construction-permanent loans under the TRID Rule?

ANSWER (UPDATED 5/31/2019)**:**

Yes. Among others, special disclosure provisions in Regulation Z are contained in:

- § 1026.17(c)(6);
- Appendix D; and
- § 1026.19(e)(3)(iv)(F) (for new construction only).

Note that § 1026.17(c)(6) and Appendix D existed prior to the TRID Rule. The TRID Rule amended the text of Appendix D and the commentary to both pre-existing provisions.

The three special provisions listed above for construction-only or construction-permanent loans work in conjunction with the other generally applicable disclosure provisions of the TRID Rule. They are available to any creditor, regardless of whether or not the creditor typically considers themselves a construction loan lender. Further, these provisions apply even if the creditor does not necessarily label the product as construction-only or construction-permanent, so long as the product meets the requirements discussed in each provision.

Section 1026.17(c)(6): Separate or Combined Disclosures for Construction Loans

Section 1026.17(c)(6) permits a creditor to treat a construction-permanent loan as either one transaction, combining the construction and permanent phases, or multiple transactions, where each phase is a separate transaction. For purposes of complying with the TRID Rule, § 1026.17(c)(6) means the creditor may provide separate construction phase and permanent phase financing Loan Estimates and Closing Disclosures or may disclose a construction-permanent loan on one, combined Loan Estimate and Closing Disclosure.

Appendix D to Part 1026: Methods of Estimating Disclosures for Construction Loans

Appendix D provides methods that may be used for estimating the construction phase financing disclosures, whether disclosed separately or combined with the permanent phase financing. Because many disclosure items for the construction financing would otherwise be based on the

best information reasonably available at the time of disclosure, Appendix D provides special procedures and assumptions creditors may use to provide consistent and compliant disclosures. For example, in cases where the timing of advances or the amount of advances in the construction phase is unknown at or before consummation, Appendix D provides methods to estimate the amounts used for the disclosure of periodic payments for the loan, which typically are interest-only payments for the construction phase, or the disclosure of amounts based on the periodic payment.

Section 1026.19(e)(3)(iv)(F): Optional Disclosure for New Construction Loans

Section 1026.19(e)(3)(iv)(F) permits creditors, in certain instances involving new construction, to use a revised estimate of a charge for good faith tolerance purposes. A new construction loan is a loan for the purchase of a home that is not yet constructed or the purchase of a new home where construction is currently underway, not a loan for financing home improvement, remodeling, or adding to an existing structure. Nor is it a loan involving a home for which a use and occupancy permit has been issued prior to the issuance of a Loan Estimate. 12 CFR § 1026.19(e)(3)(iv)(F), Comment 19(e)(3)(iv)(F)-1.

In transactions involving new construction where the creditor reasonably expects that settlement will occur more than 60 days after the original Loan Estimate is provided, the creditor may provide revised disclosures at any time prior to 60 days before consummation *if* the creditor states that possibility clearly and conspicuously on the original Loan Estimate. The statement, "You may receive a revised Loan Estimate at any time prior to 60 days before consummation" under the master heading "Additional Information About This Loan" and the heading "Other Considerations" pursuant to § 1026.37(m)(8) satisfies these statement requirements. Comment 37(m)(8)-1. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in § 1026.19(e)(3)(iv).

More information on good faith tolerances, § 1026.17(c)(6) and Appendix D for Construction Loans is available in Section 7 and Section 14 of the TILA-RESPA Rule Small Entity Compliance Guide.

Providing Loan Estimates to Consumers

QUESTION 1:

When is a creditor required to provide a Loan Estimate to a consumer?

ANSWER (UPDATED 7/31/2019)**:**

Generally, a creditor is responsible for ensuring that a Loan Estimate is delivered to a consumer or placed in the mail to the consumer no later than the third business day after receipt of the consumer's "application" for a mortgage loan subject to the TRID Rule. 12 CFR § 1026.19(e)(1)(iii).

For transactions subject to the TRID Rule, an "application" consists of the submission of the following six pieces of information:

1. The consumer's name;
2. The consumer's income;
3. The consumer's social security number to obtain a credit report;
4. The property address;
5. An estimate of the value of the property; and
6. The mortgage loan amount sought.

12 CFR § 1026.2(a)(3)(ii).

If the consumer submits these six pieces of information, the requirement to provide a Loan Estimate is triggered, and the creditor must ensure that the Loan Estimate is delivered or placed in the mail within three business days. If a mortgage broker receives a consumer's application, either the creditor or the mortgage broker may mail or deliver the Loan Estimate.

Because the definition of application refers to the ''submission" of the six pieces of information, merely maintaining such information from a previous transaction or business relationship does not constitute receipt of an application (unless the consumer indicates that the information maintained by the creditor should be used as part of an application). Additionally, if a consumer starts filling out a form online, enters the six pieces of information that constitute an application for purposes of the TRID Rule, but then saves the form to complete at a later time, the consumer has not submitted the six pieces of information that constitute an application for purposes of the TRID Rule. See 78 *Federal Register* 79730, 79768 (Dec. 31, 2013).

See also TRID Providing Loan Estimates to Consumers Question 4 discussing information submitted in connection with a request for a pre-approval or pre-qualification letter.

More information on the timing for delivering a Loan Estimate is available in Section 6 of the TILA-RESPA Rule Small Entity Compliance Guide.

QUESTION 2:

Can creditors require consumers to provide additional information (other than the six pieces of information that constitute an application under the TRID Rule) in order to receive a Loan Estimate?

ANSWER (UPDATED 7/31/2019)**:**

No, creditors cannot require consumers to provide additional information in order to receive a Loan Estimate. Thus, a creditor cannot condition provision of a Loan Estimate on the consumer submitting anything other than the six pieces of information that constitute an application under the TRID Rule. A consumer must be permitted to submit the six pieces of information that constitute an application for purposes of the TRID Rule without providing additional information. For example, an online application system cannot be designed to reject or refuse to accept an application (as defined under the TRID Rule) on the basis that it lacks other information that a creditor normally would prefer to have beyond the six pieces the information.

Additionally, if the creditor or another person represented to the consumer that it will not provide a Loan Estimate without the consumer first submitting additional information beyond the six pieces of information that constitute an application for purposes of the TRID Rule, the Bureau or another supervisory or enforcement agency could analyze the conduct under the prohibitions against unfair, deceptive, or abusive acts or practices in the Dodd-Frank Act. See 12 U.S.C. §§ 5531, 5536.

For more information on the six pieces of information that constitute an application for purposes of the TRID Rule, see TRID Providing Loan Estimates to Consumers Question 1.

QUESTION 3:

Can creditors require consumers to submit verifying documents in order for the consumer to receive a Loan Estimate?

ANSWER (UPDATED 7/31/2019)**:**

No, creditors cannot require a consumer to provide verifying documents in order to receive a Loan Estimate. 12 CFR § 1026.19(e)(2)(iii); comment 19(e)(2)(iii)-1. Thus, a creditor cannot condition provision of Loan Estimate on the consumer submitting any verifying documents. Additionally, if the creditor or another person represented to the consumer that it will not provide a Loan Estimate without the consumer first submitting verifying documents, the Bureau or another supervisory or enforcement agency could analyze the conduct under the prohibitions against unfair, deceptive, or abusive acts or practices in the Dodd-Frank Act. See 12 U.S.C. §§ 5531, 5536.

QUESTION 4:

Is the requirement to provide a Loan Estimate triggered if the consumer submits the six pieces of information in order to receive a pre-approval or pre-qualification letter?

ANSWER (UPDATED 7/31/2019)**:**

Yes. If a consumer submits the six pieces of information that constitute an application for purposes of the TRID Rule to obtain a pre-approval or pre-qualification letter for a mortgage loan subject to the TRID Rule, the creditor is responsible for ensuring that a Loan Estimate is provided to the consumer within three business days of receipt of the last of the six pieces of information. 12 CFR § 1026.19(e)(1)(iii). See comment 2(a)(3)-1.i. The fact that a consumer submits the six pieces of information to obtain the pre-approval or the pre-qualification letter does not change the obligation to ensure a Loan Estimate is provided. The consumer has submitted the six pieces of information that constitute an application for purposes of the TRID Rule and, thus, the requirement to provide the Loan Estimate has been triggered.

However, if the consumer does not submit all six of the pieces of information that constitute an application for purposes of the TRID Rule (i.e., does not submit the sixth piece of information, for example, the property address), a Loan Estimate is not required. The creditor may simply provide a pre-approval or a pre-qualification letter in compliance with the creditor's practices and applicable law. For example, the letter may need to comply with § 1026.19(e)(2)(ii) depending on its content and when it is provided to the consumer.

Once the consumer submits the sixth piece of information that constitutes an application for purposes of the TRID Rule, the requirement to provide the Loan Estimate is triggered. Comment 2(a)(3)-1.ii. For example, if after receiving the pre-qualification letter, the consumer submits the property address (i.e., the sixth of the six pieces of information that constitute an application under the TRID Rule), the creditor is obligated to ensure the Loan Estimate is provided to the consumer by the third business day after submission of the property address.

For more information on the six pieces of information that constitute an application for purposes of the TRID Rule, see TRID Providing Loan Estimates to Consumers Question 1.

QUESTION 5:

What if a creditor needs to collect additional information (other than the six pieces of information that constitute an application for purposes of the TRID Rule) or verifying documents to process a pre-approval or pre-qualification request?

ANSWER (UPDATED 7/31/2019)**:**

The TRID Rule does not prohibit a creditor from requesting and collecting additional information (beyond the six pieces of information that constitute an application under the TRID Rule) or verifying documents it deems necessary in connection with a request for a mortgage loan, including a request for a pre-approval or a pre-qualification letter. Consumers may voluntarily submit such information and documents prior to receiving a Loan Estimate. However, a creditor cannot condition provision of a Loan Estimate on the consumer submitting additional information (beyond the six pieces of information that constitute an application for purposes of the TRID Rule) or any verifying documents. It also must allow the consumer to submit the six pieces of information that constitute an application for purposes of the TRID Rule (without any verifying documents or additional information). See also TRID Providing Loan Estimates to Consumers Question 2 and Question 3.

For example, a creditor's pre-approval process may entail a consumer to submitting the six pieces of information that constitute an application for purposes of the TRID Rule, additional pieces of information about the consumer's credit history and the collateral value, and some verifying documents. If the consumer submits the six pieces of information that constitute an application for purposes of the TRID Rule (either alone or with some of the other information and documents that the creditor requires), the creditor must ensure that a Loan Estimate is provided to the consumer within three business days, even though the creditor requires

additional information and documents to process the consumer's request for a pre-approval or pre-qualification letter. See Comment 2(a)(3)-1.

Conversely, a creditor's pre-approval process may entail a consumer submitting five (or fewer) of the six pieces information that constitute an application for purposes of the TRID Rule, other pieces of information about the consumer's credit history and the collateral value, and some verifying documents. As long as the consumer does not submit all six pieces of information that constitute an application for purposes of the TRID Rule, the requirement to provide a Loan Estimate is not triggered. In that case, the creditor may simply provide a pre-approval letter in compliance with the creditor's practices and applicable law. For example, the letter may need to comply with § 1026.19(e)(2)(ii) depending on its content and when it is provided to the consumer.

However, if the creditor or another person represented to the consumer that it will not provide a Loan Estimate without the consumer first submitting verifying documents or any information beyond the six pieces of information that constitute an application, the Bureau or another supervisory or enforcement agency could analyze the conduct under the prohibitions against unfair, deceptive, or abusive acts or practices in the Dodd-Frank Act. See 12 U.S.C. §§ 5531, 5536.

For more information on the six pieces of information that constitute an application for purposes of the TRID Rule, see TRID Providing Loan Estimates to Consumers Question 1.

Providing Closing Disclosures to Consumers

QUESTION 1:

If separate Closing Disclosures are provided to the seller and the consumer, does the TRID Rule require that seller-paid Loan Costs and Other Costs be disclosed on page 2 of the consumer's Closing Disclosure?

ANSWER (UPDATED 06/9/2020)**:**

Yes, the TRID Rule requires seller-paid Loan Costs and Other Costs to be disclosed on page 2 of the consumer's Closing Disclosure even if separate Closing Disclosures are provided to the seller and consumer. A creditor does not comply with the TRID Rule if it discloses seller-paid Loan Costs and Other Costs only on page 2 of the Closing Disclosure provided to the seller. 12 CFR § 1026.38(f) and (g); 1026.38(t)(5)(v) and (t)(5)(vi).

See Section 11.7 of the Small Entity Compliance Guide for more information about the modifications allowed when separating the seller and consumer's Closing Disclosures.

Lender Credits

QUESTION 1:

What is a lender credit for purposes of the TRID Rule?

ANSWER (UPDATED 02/26/2020)**:**

The regulatory text and commentary for various TRID Rule provisions use the term "lender credit" or "lender credits." See, for example, 12 CFR §§ 1026.19(e)(3)(iv)(D), 1026.37(a)(13)(ii), 1026.37(d)(1)(i)(D), 1026.37(g)(6)(ii), 1026.38(d)(1)(i)(D), 1026.38(e)(2)(iii)(A), 1026.38(f), 1026.38(h)(3), and 1026.38(t)(5)(ii).

For purposes of the TRID Rule, lender credits include: (1) payments, such as credits, rebates, and reimbursements, that a creditor provides to a consumer to offset closing costs the consumer will pay as part of the mortgage loan transaction; and (2) premiums in the form of cash that a creditor provides to a consumer in exchange for specific acts, such as for accepting a specific interest rate, or as an incentive, such as to attract consumers away from competing creditors. Comments 17(c)(1)-19, 19(e)(3)(i)-5, 37(g)(6)(ii)-1, and 38(h)(3)-1.

Amounts the consumer or seller pays are not lender credits for purposes of the TRID Rule. For example, amounts that a creditor collects from a consumer, holds for a period of time, and then applies to cover closing costs are not lender credits because, in such cases, the creditor is not providing anything to the consumer. Similarly, amounts that a creditor collects from a consumer, holds for a period of time, and then returns to the consumer later are not lender credits because, in substance, the funds are provided by the consumer rather than the creditor.

QUESTION 2:

What is the difference between a specific lender credit and a general lender credit?

ANSWER (UPDATED 02/26/2020)**:**

For purposes of the TRID Rule, a lender credit can be either a specific lender credit or a non-specific lender credit. Comment 19(e)(3)(i)-5. Non-specific lender credits are also called general lender credits.

A specific lender credit includes a credit, rebate, reimbursement, or similar payment from a creditor to the consumer that offsets all or part of a specific closing cost the consumer will pay. Comment 19(e)(3)(i)-5.

A general lender credit includes a credit, rebate, reimbursement, or similar payment from a creditor to the consumer that offsets all or part of the closing costs but without specifying the particular closing cost or costs that are being offset. Comment 19(e)(3)(i)-5. General lender credits also include premiums in the form of cash that a creditor provides to a consumer in exchange for specific acts or as an incentive. Thus, a creditor that offsets a set dollar amount of costs (without specifying which costs it is offsetting) is providing a general lender credit, not a specific lender credit. For example, a creditor that rebates $500 of the consumer's closing costs (without specifying which closing costs it is rebating) is providing a general lender credit. By contrast, a creditor that rebates up to $500 of the consumer's appraisal cost is providing a specific lender credit.

The distinction between specific lender credits and general lender credits is important because specific lender credits and general lender credits are disclosed differently on the Closing Disclosure, as discussed in TRID Lender Credit Question 6.

QUESTION 3:

Is a creditor required to disclose a closing cost and a related lender credit on the Loan Estimate if the creditor will absorb the cost?

ANSWER (UPDATED 02/26/2020)**:**

No. The TRID Rule does not require disclosure of a closing cost and a related lender credit on the Loan Estimate if the creditor incurs a cost, but will not charge the consumer for that cost (i.e., the creditor will "absorb" the cost). In such cases, the absorption of the cost or charge would not "offset" an amount paid by the consumer. However, a creditor must disclose a

closing cost and related lender credit on the Loan Estimate if the creditor is offsetting a cost charged to the consumer. Comment 37(g)(6)(ii)-2.

To illustrate, assume a creditor will require an appraisal, credit report, flood determination, title search, and lender's title insurance policy in connection with a particular mortgage loan transaction. Further assume, that the creditor will incur attorney fees for loan documentation and recording fees in connection with the transaction. If, based on the best information reasonably available, the consumer will only pay an application fee of $500 and the creditor will absorb all other costs, the creditor is not required to disclose the appraisal fee, credit report fee, flood determination fee, title search fee, lender's title insurance policy premiums, attorney fees for loan documentation, and recording fees on the Loan Estimate. Conversely, if the creditor agrees to provide a lender credit sufficient to offset all of these charges, except the application fee, the creditor must disclose the charges in the Loan Costs table and Other Costs table, as applicable, and include a corresponding total amount in the Lender Credits disclosure on the Loan Estimate.

Alternatively, the TRID Rule does not prohibit creditors from including amounts for costs that the creditor absorbs (i.e., does not charge the consumer) when the creditor is disclosing Lender Credits in the Total Closing Costs section of the Loan Estimate. Note, however, that the restrictions on decreasing lender credits, discussed in TRID Lender Credit Question 10, apply to any amounts the creditor includes in the Lender Credits disclosure on the Loan Estimate.

QUESTION 4:

Is a creditor required to disclose a closing cost and related lender credit on the Closing Disclosure if the creditor will absorb the cost?

ANSWER (UPDATED 02/26/2020)**:**

Yes, if the closing cost is a cost incurred in connection with the transaction. A creditor must disclose on the Closing Disclosure a closing cost it incurs even if the consumer will not be charged for the closing cost (i.e., the creditor will "absorb" the cost). If a creditor absorbs a cost incurred in connection with the transaction, the creditor must disclose such cost on the Closing Disclosure in the "Paid by Others" column in the Loan Costs or Other Costs table, as applicable.

The TRID Rule requires that the Closing Disclosure include all costs incurred in connection with the transaction. 12 CFR §§ 1026.38(f) and 1026.38(g). For example, such costs include all real estate brokerage fees, homeowner's or condominium association charges paid at

consummation, home warranties, inspection fees, and other fees that are part of the real estate closing but not required by the creditor. Comment 38(g)(4)-1.

QUESTION 5:

How are lender credits disclosed on the Loan Estimate?

ANSWER (UPDATED 02/26/2020)**:**

To disclose lender credits on the Loan Estimate, the creditor must add together the amounts of all general and specific lender credits. 12 CFR § 1026.37(g)(6)(ii), comment 37(g)(6)(ii)-1. The total of all general and specific lender credits is disclosed as a negative number, and labeled as "Lender Credits" in Section J: Total Closing Costs on page 2 of the Loan Estimate. 12 CFR § 1026.37(g)(6)(ii). This total (i.e., negative number) must also be disclosed as "Lender Credits" in the Estimated Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Loan Estimate. 12 CFR § 1026.37(d)(1)(i)(D).

When including lender credits in the total disclosed on the Loan Estimate, the creditor should ensure that the lender credits are sufficient to cover the costs the creditor represented would be offset. Comment 37(g)(6)(ii)-2. If the exact amount is not known, the creditor must estimate the costs based on the best information reasonably available to the creditor at the time that it provides the Loan Estimate to the consumer. 12 CFR § 1026.17(c)(2)(i); comment 17(c)(2)(i)-1.

QUESTION 6:

How are lender credits disclosed on the Closing Disclosure?

ANSWER (UPDATED 02/26/2020)**:**

The requirements for disclosing a lender credit on the Closing Disclosure differ depending on whether the lender credit is a general lender credit or a specific lender credit.

To disclose specific lender credits on the Closing Disclosure, the creditor must separately list the amount of each specific lender credit in either the Loan Costs table or Other Costs table, as applicable, on page 2 of the Closing Disclosure. In either case, the amount of the lender credit is disclosed in the "Paid by Others" column for the row that discloses the specific closing cost to which the lender credit is attributable. Comment 38(h)(3)-1.

To disclose general lender credits on the Closing Disclosure, the creditor must add the amounts of all general lender credits together. The total of the general lender credits is disclosed as a

negative number, and labeled as “Lender Credits” in Section J under the Total Closing Costs (Borrower-Paid) subheading on page 2 of the Closing Disclosure. Comment 38(h)(3)-1. The total of the general lender credits must also be disclosed as “Lender Credits” in the Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Closing Disclosure. 12 CFR § 1026.38(d)(1)(i)(D).

Additionally, a creditor may provide a lender credit to resolve an excess charge. 12 CFR § 1026.38(h)(3). An excess charge is a charge that exceeds the applicable good-faith tolerance limitations set forth in Regulation Z, 12 CFR § 1026.19(e)(3). If the creditor opts to resolve the excess charge through a lender credit: (1) the amount of the lender credit is included in the Closing Costs at the bottom of page 1 and in the Lender Credits disclosed in Section J under the Total Closing Costs (Borrower Paid) subheading on page 2; and (2) the creditor must include a statement notifying the consumer that the creditor is paying the amount to offset an excess charge and that the amount is included as part of Lender Credits. Comment 38(h)(3)-2; see also Form H-25(F) of Appendix H to Regulation Z for an example of this statement.

QUESTION 7:

How does a creditor disclose lender credits for a loan that the creditor refers to as a “no-cost loan”?

ANSWER (UPDATED 02/26/2020)**:**

The answer depends on whether the creditor is absorbing closing costs as well as whether the creditor is offsetting costs for specific settlement services. If the creditor is incurring closing costs, but will not be charging the consumer for some or all of the closing costs at or before consummation (i.e., the creditor is “absorbing” closing costs), see TRID Lender Credit Questions 3 and 4. If the creditor is offsetting some or all of the costs for specific settlement services that are being charged to the consumer in connection with the loan, see TRID Lender Credit Question 8. If the creditor is offsetting all or a portion of the costs that are being charged to the consumer, but not offsetting charges for specific settlement services, see TRID Lender Credit Question 9.

QUESTION 8:

How does a creditor disclose lender credits if the creditor provides a credit, rebate, or reimbursement to offset specific closing costs charged to the consumer?

ANSWER (UPDATED 02/26/2020)**:**

If a creditor is providing lender credits to offset specific closing costs charged to the consumer, whether some or all of these closing costs, the creditor is providing one or more specific lender credits. Comments 19(e)(3)(i)-5 and 37(g)(6)(ii)-2.

On the Loan Estimate, the creditor must disclose each of the closing costs charged to the consumer in the Loan Costs and Other Costs table, as applicable. 12 CFR §§ 1026.19(e)(1)(i), 1026.37(f), and 1026.37(g). The creditor must also include a corresponding total amount (as a negative number) in the amount disclosed as "Lender Credits" in Section J: Total Closing Costs on page 2 and in the amount disclosed as "Lender Credits" in the Estimated Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Loan Estimate. 12 CFR §§ 1026.37(d)(1)(i)(D) and 1026.37(g)(6)(ii). The creditor should ensure that the amount disclosed as Lender Credits is sufficient to cover the costs the creditor represented that the consumer would not have to pay at consummation. Comment 37(g)(6)(ii)-2. If the exact amount of the costs is not known, the creditor must estimate the costs based on the best information reasonably available to the creditor at the time that it provides the Loan Estimate to the consumer. 12 CFR § 1026.17(c)(2)(i); Comment 17(c)(2)(i)-1.

On the Closing Disclosure, the creditor must disclose the closing costs in the Loan Costs or Other Costs table, as applicable, with each closing cost in the "Paid by Others" column for the row that discloses the specific closing cost to which the lender credit is attributable. Comment 38(h)(3)-1.

QUESTION 9:

How does a creditor disclose lender credits when it is offsetting a certain dollar amount of closing costs charged to the consumer without specifying which costs it is offsetting?

ANSWER (UPDATED 02/26/2020)**:**

If a creditor is providing a lender credit to offset a certain dollar amount of closing costs charged to the consumer without specifying which costs, it is providing a general lender credit. If the

creditor is providing such lender credits in a certain dollar amount, it is providing a general lender credit, even if the amount is enough to offset all the closing costs charged to the consumer.

On the Loan Estimate, the general lender credit must be included in the total amount, as a negative number, in the "Lender Credits" disclosure in Section J: Total Closing Costs on page 2 of the Loan Estimate. Comment 37(g)(6)(ii)-1. It must also be included in the amount disclosed as "Lender Credits" in the Estimated Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Loan Estimate. 12 CFR § 1026.37(d)(1)(i)(D).

On the Closing Disclosure, the general lender credit must be included as a negative number in the amount disclosed as "Lender Credits" in Section J under the Total Closing Costs (Borrower-Paid) subheading on page 2 of the Closing Disclosure, and in the amount disclosed as "Lender Credits" in the Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Closing Disclosure. 12 CFR §§ 1026.38(d)(1)(i)(D) and 1026.38(h)(3); Comment 38(h)(3)-1.

QUESTION 10:

Can lender credits change?

ANSWER (UPDATED 02/26/2020)**:**

Yes, but only in certain circumstances. Regulation Z does not limit a creditor's ability to increase the amount of lender credits disclosed on the Loan Estimate. However, a decrease in the amount of the lender credits disclosed on the Loan Estimate can lead to a violation of the good faith disclosure standard under Regulation Z, 12 CFR § 1026.19(e)(3) (i.e., a tolerance violation). Lender credits may decrease only if there is an accompanying changed circumstance or other triggering event under § 1026.19(e)(3)(iv), and the creditor provides the consumer with a revised estimate within three business days of receiving information sufficient to establish that the changed circumstance or other triggering event has occurred. 12 CFR § 1026.19(e)(4).

The TRID Rule requires that all estimated closing costs that the consumer will pay be disclosed in good faith. Generally, an estimated closing cost is disclosed in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed or is otherwise within applicable tolerance standards. 12 CFR § 1026.19(e)(3).

The actual total amount of lender credits, whether specific or general (i.e., non-specific), provided by the creditor that is less than the estimated lender credits disclosed on the Loan

Estimate is an increased charge to the consumer for purposes of determining good faith under the TRID Rule. Comment 19(e)(3)(i)-5. Specifically, the total amount of lender credits (specific and general) actually provided to the consumer is compared to the amount of the lender credits identified in Section J: Total Closing Costs on page 2 of the Loan Estimate. Comments 19(e)(3)(i)-5 and -6.

Essentially, lender credits are a negative charge to the consumer subject to the good faith requirements of the TRID Rule, and must be considered when determining whether disclosures were made in good faith and within applicable tolerance standards. For example, if the creditor discloses a $750 estimate for lender credits on the Loan Estimate, but only $500 of lender credits is actually provided to the consumer, the actual amount of lender credits provided is less than the estimated lender credits disclosed on the Loan Estimate, and is therefore, an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i).

Specifically, absent a changed circumstance or other triggering event, the amount of the total specific and general lender credits actually provided to the consumer cannot be less than the amount of lender credits disclosed in Section J: Total Closing Costs on page 2 of the Loan Estimate (i.e., the total lender credits cannot decrease).

If a changed circumstance or other triggering event causes a lender credit to decrease, the creditor is not subject to a tolerance violation, assuming the other requirements for resetting tolerances are met. 12 CFR § 1026.19(e)(3)(iv) and (e)(4); Comment 19(e)(3)(i)-5; and the 2013 Final Rule, 78 *Federal Register* at 79824.

Total of Payments Disclosure

QUESTION 1:

What is the Total of Payments disclosure on the Closing Disclosure?

ANSWER (UPDATED 6/9/2020)**:**

The Total of Payments disclosure is the total, expressed as a dollar amount, of:

- principal,
- interest,
- mortgage insurance, and

- loan costs

that the consumer will have paid after making all payments related to the mortgage. The disclosure is the sum of the amounts paid through the end of the loan term and assumes that the consumer makes payments as scheduled and on time. 12 CFR § 1026.38(o)(1); Comments 38(o)(1)-1 and 37(l)(1)(i)-1.

The Total of Payments does not include payments of principal, interest, mortgage insurance, or loan costs that the seller or other party, such as the creditor, may agree to offset (in whole or in part) through a specific credit, for example through a specific seller or lender credit, because these amounts are not *paid by the consumer*. General credits (i.e., generalized payments from the creditor, seller, or other party to the consumer that do not pay for a particular fee) do not offset amounts for purposes of the Total of Payments calculation. Comment 38(o)(1)-1.

In calculating the Total of Payments:

Payments of **principal** are the *total* the consumer will pay towards principal on the loan through the end of the loan term. Comment 38(o)(1)-1.

Payments of **interest** are the *total* the consumer will pay towards interest on the loan through the end of the loan term and includes prepaid interest. For Adjustable Rate Mortgages, as defined in § 1026.37(a)(10)(i)(A), interest is calculated using the guidance provided in Comment 17(c)(1)-10. Comment 38(o)(1)-1; Comment 37(l)(1)(i)-1.

Payments of **mortgage insurance** are the *total* the consumer will pay towards mortgage insurance or any functional equivalent and includes amounts for prepaid or escrowed mortgage insurance. Comment 38(o)(1)-1; Comment 37(l)(1)(i)-1. This includes premiums or other charges for any guarantee providing coverage similar to mortgage insurance (such as a Department of Veterans Affairs or Department of Agriculture guarantee) even if not considered insurance under state or other applicable law. Comment 37(c)(1)(i)(C)-1.

Payments of **loan costs** are the *total* the consumer will pay towards the costs disclosed in the Loan Costs Table and designated as “Borrower-Paid” on the Closing Disclosure under § 1026.38(f). 12 CFR § 1026.38(f); Comments 38(o)(1)-1 and 37(l)(1)(i)-1.

More information on disclosing the Total of Payments is available in Section 3.6.1 of the TILA-RESPA Rule Guide to Forms.

QUESTION 2:

Does a creditor account for negative prepaid interest in the Total of Payments disclosure and calculation?

ANSWER (UPDATED 6/9/2020)**:**

Yes. Regulation Z, 12 CFR § 1026.38(o)(1) requires a creditor to calculate and disclose the total of payments expressed as a dollar amount. This disclosure is total the consumer will have paid after making all scheduled payments of principal, interest, mortgage insurance, and loan costs through the end of the loan term. For purposes of this calculation, interest is the *total* the consumer will pay towards interest on the loan and includes prepaid interest, sometimes referred to as "odd-days" or "per diem" interest.

Prepaid interest under § 1026.38(g)(2) is typically disclosed as a positive number when interest is due at consummation for the period of time before interest begins to accrue for the first scheduled periodic payment. Comments 38(g)(2)-1 and 37(g)(2)-1. Typically, mortgage interest is paid one month in arrears meaning that, for example, if the first scheduled periodic payment due is on November 1st, it will cover interest accrued in the preceding month of October. In that example, if the consumer consummates the mortgage loan on September 20th, interest starts to accrue on September 20th and at consummation the consumer will typically prepay interest for the 11-day period through the end of September, and that amount must be disclosed under § 1026.38(g)(2) as a positive number.

In some cases, a loan may have a negative amount for prepaid interest disclosed under § 1026.38(g)(2), sometimes referred to as a *prepaid interest credit*. Negative prepaid interest can result if consummation occurs after interest begins accruing for periodic payments. In the example above, if the consumer instead consummates the mortgage loan on October 4th but the first scheduled periodic payment is due on November 1st and will cover interest accrued in the preceding month of October, then at consummation the creditor will typically credit the consumer for the preceding 3 days in October to offset some of that first scheduled periodic payment. That amount must be disclosed under § 1026.38(g)(2) as a negative number.

When calculating the Total of Payments, if the loan includes negative prepaid interest, it is accounted for as a negative number. Comment 38(g)(2)-2. Using a negative number will offset the interest the consumer will have paid and therefore reduces the amount disclosed as the Total of Payments.

More information on disclosing the Total of Payments is available in Total of Payments Question 1, above, and Section 3.6.1 of the TILA-RESPA Rule Guide to Forms.

Optional Signature Line

QUESTION 1:

Can a creditor require a consumer to sign and return the Loan Estimate or Closing Disclosure?

ANSWER (UPDATED 06/9/2020)**:**

It depends. While the TRID Rule does not require consumers to sign the Loan Estimate or Closing Disclosure, it provides creditors the option to include a line for consumer signatures to acknowledge receipt. 12 CFR §§ 1026.37(n), 38(s). A creditor may include the signature line and require the consumer to sign the disclosure, but only if the consumer receives the disclosure in a form that they may keep. 12 CFR §§ 1026.37(o)(1)(i), 38(t)(1)(i). The consumer must have the ability to retain a copy of the disclosure after returning the signed disclosure to the creditor.

For example, a creditor may require a consumer to return a signed copy of the Closing Disclosure; however, the creditor must ensure that the consumer receives at least one copy of the Closing Disclosure, in a form that the consumer may retain, no later than three business days before consummation. 12 CFR §§ 1026.38(s)(1), 19(f)(1)(ii)(A), and 38(t)(1)(i). If the consumer receives only one copy of the Closing Disclosure and the creditor requires the consumer to sign and return that copy, then the consumer has not received the Closing Disclosure in a form that the consumer may keep and the requirements of § 1026.38(t)(1)(i) have not been met.