LESSON FOUR

Revisions and Corrections to Closing Disclosures

When are creditors required to correct or revise Closing Disclosures?

Creditors must redisclose terms or costs on the Closing Disclosure if certain changes occur to the transaction after the Closing Disclosure was first provided that cause the disclosures to become inaccurate. There are three categories of changes that require a corrected Closing Disclosure containing all changed terms.

- Changes that occur before consummation that require a new three-business-day waiting period.
- Changes that occur before consummation and do not require a new three-business-day waiting period.
- Changes that occur after consummation.

What changes before consummation require a new waiting period?

If one of the following occurs after delivery of the Closing Disclosure and before consummation, the creditor must provide a corrected Closing Disclosure containing all changed terms and ensure that the consumer receives it no later than three business days before consummation.

- The disclosed APR becomes inaccurate. If the annual percentage rate (APR) previously disclosed becomes inaccurate, the creditor must provide a corrected Closing Disclosure with the corrected APR disclosure and all other terms that have changed. The APR’s accuracy is determined according to § 1026.22.

- The loan product changes. If the loan product previously disclosed becomes inaccurate, the creditor must provide a corrected Closing Disclosure with the corrected loan product and all other terms.
• **A prepayment penalty is added.** If a prepayment penalty is added to the transaction, the creditor must provide a corrected *Closing Disclosure* with the prepayment penalty provision disclosed and all other terms that have changed.

**What changes do not require a new three-day waiting period?**

For any other changes before *consummation* that do not fall under the three categories above (i.e., related to the APR, loan product, or the addition of a prepayment penalty), the creditor still must provide a corrected *Closing Disclosure* with any terms or costs that have changed and ensure that the consumer receives it.

For these changes, there is no additional **three-business-day waiting period** required. The creditor must ensure only that the consumer receives the revised *Closing Disclosure* at or before *consummation*.

**What if a consumer asks for the revised Closing Disclosure before consummation?**

For changes other than to the APR, loan product, or the addition of a prepayment penalty, the creditor is not required to provide the consumer with the revised *Closing Disclosure* until the day of *consummation*. However, a consumer has the right to **inspect** the *Closing Disclosure* during the **business day before consummation**.

If a consumer asks to inspect the *Closing Disclosure* the **business day before consummation**, the *Closing Disclosure* presented to the consumer must reflect any adjustments to the costs or terms that are known to the creditor at the time the consumer inspects it.

Creditors may arrange for settlement agents to permit consumers to inspect the *Closing Disclosure*.

An example of a post-consummation event that would require a new *Closing Disclosure* is a discovery that a recording fee paid by the consumer is different from the amount that was disclosed on the *Closing Disclosure*. However, other post-consummation events that are not related to settlement, such as tax increases, do not require a revised *Closing Disclosure*.

**Are creditors required to provide corrected Closing Disclosures if terms or costs change after consummation?**

Yes, in some circumstances. Creditors must provide a corrected *Closing Disclosure* if an **event in**
connection with the settlement occurs during the 30-calendar-day period after consummation that causes the Closing Disclosure to become inaccurate and results in a change to an amount paid by the consumer from what was previously disclosed.

When a post-consummation event requires a corrected Closing Disclosure, the creditor must deliver or place in the mail a corrected Closing Disclosure not later than 30 calendar days after receiving information sufficient to establish that such an event has occurred.

Is a corrected Closing Disclosure required if a post-consummation event affects an amount paid by the seller?

Yes, in some circumstances. Settlement agents must provide a revised Closing Disclosure if an event related to the settlement occurs during the 30-day period after consummation that causes the Closing Disclosure to become inaccurate and results in a change to an amount actually paid by the seller from what was previously disclosed.

The settlement agent must deliver or place in the mail a corrected Closing Disclosure not later than 30 calendar days after receiving information sufficient to establish that such an event has occurred.

Are clerical errors discovered after consummation subject to the redislosure obligation?

Yes. Creditors also must provide a revised Closing Disclosure to correct non-numerical clerical errors and document refunds for tolerance violations no later than 60 calendar days after consummation.

An error is clerical if it does not affect a numerical disclosure and does not affect the timing, delivery, or other requirements imposed by § 1026.19(e) or (f).

For example:

- If the Closing Disclosure identifies the incorrect settlement service provider as the recipient of a payment, the error would be considered clerical because it is non-numerical and does not affect any of the delivery requirements set forth in § 1026.19(e) or (f).

- However, if the Closing Disclosure lists the wrong property address, which affects the delivery requirement imposed by § 1026.19(e) or (f), the error would not be considered clerical.
Do creditors need to provide corrected Closing Disclosures when they refund money to cure tolerance violations?

Yes. If the creditor cures a tolerance violation by providing a refund to the consumer, the creditor must deliver or place in the mail a corrected Closing Disclosure that reflects the refund no later than 60 calendar days after consummation.

Additional requirements and prohibitions

Are there exceptions to the disclosure requirements for loans secured by a timeshare interest?

Yes. Loans secured by interests in timeshare plans are still subject to the TILA-RESPA rule, but the Bureau recognizes that these loans may commonly be consummated within a few days of the consumer’s application. The Bureau thus adopted abbreviated timing, delivery, and disclosure obligations for these loans when consummation occurs within three business days of the application. For these loans, creditors may forego a Loan Estimate and provide only the Closing Disclosure.

In addition, the waiting periods and timing requirements applicable to most loans subject to the TILA-RESPA Rule are inapplicable to loans secured by timeshare interests. Rather, creditors are required to ensure only that the consumer receives the Closing Disclosure no later than consummation.

Are there any limits on fees that may be charged prior to disclosure or application?

Yes. A creditor or other person may not impose any fee on a consumer in connection with the consumer’s application for a mortgage transaction until the consumer has received the Loan Estimate and has indicated intent to proceed with the transaction.

This restriction includes limits on imposing:

- Application fees;
- Appraisal fees;
- Underwriting fees; and
- Other fees imposed on the consumer.
The only exception to this exclusion is for a **bona fide and reasonable fee for obtaining a consumer’s credit report**.

**How does a consumer indicate an intent to proceed with a transaction?**

A consumer indicates **intent to proceed** with the transaction when the consumer communicates, in any manner, that the consumer chooses to proceed after the Loan Estimate has been delivered, unless a particular manner of communication is required by the creditor.

This may include:

- Oral communication in person immediately upon delivery of the Loan Estimate;

- Oral communication over the phone, written communication via email, or signing a pre-printed form after receipt of the Loan Estimate.

A consumer’s silence is not indicative of **intent to proceed**.

The creditor must document this communication to satisfy the record retention requirements of § 1026.25.

**What does it mean to impose a fee?**

A fee is **imposed** by a person if the person requires a consumer to provide a method for payment, even if the payment is not made at that time.

This would include, for example:

- A creditor or mortgage broker requiring the consumer to provide a check to pay for a processing fee before the consumer receives the Loan Estimate, even if the check is not to be cashed until after the Loan Estimate is received and the consumer has indicated an **intent to proceed**.

- A creditor or mortgage broker requiring the consumer to provide a credit card number for a processing fee before the consumer receives the Loan Estimate, even if the credit card will not be charged until after the Loan Estimate is received and the consumer has indicated an **intent to proceed**.

**Can creditors provide estimates of costs and terms to consumers before the Loan Estimate is provided?**
The TILA-RESPA rule does not prohibit a creditor or other person from providing a consumer with estimated terms or costs prior to the consumer receiving the Loan Estimate.

However, if a person (such as a creditor or broker) provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the Loan Estimate, it must clearly and conspicuously state at the top of the front of the first page of the written estimate “Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing the loan.”

There are other restrictions on the form of this statement to assure it is not confused with the Loan Estimate:

- Must be in font size no smaller than 12-point font.
- May not have headings, content, and format substantially similar to the Loan Estimate or the Closing Disclosure.

The Bureau has provided a model of the required statement in form H-26 of appendix H to Regulation Z.

Are creditors allowed to require additional verifying information other than the six pieces of information that form an application from consumers before providing a Loan Estimate?

No. A creditor or other person may not condition providing the Loan Estimate on a consumer submitting documents verifying information related to the consumer’s mortgage loan application before providing the Loan Estimate.

For example:

- A creditor may ask for the sale price and address of the property, but may not require the consumer to provide a purchase and sale agreement to support the information the consumer provides orally before the creditor provides the Loan Estimate.

- A mortgage broker may ask for the names, account numbers, and balances of the consumer’s checking and savings accounts, but the mortgage broker may not require the consumer to provide bank statements or similar documentation to support the information orally provided by the consumer before the creditor provides the Loan Estimate.