

- 1) **Question:** With the tightening of tolerances and limits on variances in fee estimates from the LE to the CD, if we were to list 3 title companies on our RESPA service provider disclosure, do we have to prove that the borrower chose to shop from that list? The concern is that if one LO were to send all of his clients to one of the title companies on the list does that have the potential of looking as though the borrower(s) did not have the opportunity to “shop.” Would a disclosure the borrower signs stating what title company they want to use work to “prove” we allowed the borrower to shop?

Answer: In order to allow a member to shop, you list the service in the Section C. “Services You Can Shop For” of the Loan Estimate and provide the member with the Written List of Settlement Service Providers (§ 1026.19(e)(3)(ii)(C) and (e)(1)(vi)(C)). The Written List of Settlement Service Providers should have at least one service provider for each service for which the member is allowed to shop. If the member chooses a service provider from the list, that fee is subject to a 10% tolerance (§1026.19(e)(3)(ii)). If the member chooses their own service provider not on the list, you are not bound by the fee listed on the Loan Estimate and the fee can vary any amount without regard to tolerance issues (§1026.19(e)(3)(iii)(D)).

By listing the fee as a service the member CAN shop for on the loan estimate, and providing the Written List of Service Providers to the member, you have proved you allowed the member to shop.

- 2) **Question:** Is it your understanding that we would have two definitions of business days? One for the LE that could or could not include Saturday and one for the CD, in which we would use Saturday due to the fed allowing Saturday as a rescission date.

Answer: There are two definitions of “business day.” For timing purposes regarding the Loan Estimate, “business day” is any day on which the creditor’s offices are open to the public for carrying out substantially all of its business functions (Comment 19(e)(1)(iii)-1). For example, if a lender retail locations are open only Monday through Friday, those are the “business days” for purposes of delivering the loan estimate and Saturday and Sunday wouldn’t count.

For timing purposes regarding the Closing Disclosure, “business day” is all calendar days except Sundays and 10 federal holidays (Comment 19(f)(1)(ii)-1).

- 3) **Question:** There was some commentary on one of the webinars we attended where they gave the impression that anything the borrower could shop for (that would be required for a loan) needed to be listed on the settlement service providers. Typically, that would only be title; however, what about Survey companies? Do we have to list them even though we have no established relationship with them, but they may be necessary for closing the loan if we cannot do a T-19?

Answer: If a lender requires a survey and chooses the survey company for the member, the member was not allowed to shop. This is true regardless of whether a lender has established relationships with any particular survey company.

A lender should include the survey fee in the loan estimate. If a T-19 will be sufficient and no new survey is needed, the estimate for the survey fee won't be included in any tolerance calculation. (Comment 19(e)(3)(ii)-5).

If a lender requires a survey and allows the member to select the survey company, the member has been allowed to shop.

- 4) In training with our Loan Origination System (Ellie Mae/Encompass), they discussed several definitions of business day; Calendar, Creditor Business Day, Federal Postal Calendar(non-specific), Federal Business Day (specific) Calendar.
- a. **Question:** Can you provide further clarification their definitions?

Answer: There are two definitions of business day, one for the LE and one for the CD. See question 4 above.

- b. **Question:** Are we to consider Saturday a business day?

Answer: For the timing requirements of the Loan Estimate, If a lender is open on Saturday for most of their functions, you should count Saturday as a business day.

For the timing requirements of the Closing Disclosure, you should count Saturday as a business day unless one of the 10 Federal holidays happens to fall on that particular Saturday. (The 10 Federal holidays for 2015 are: New Year's Day, MLK day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day)

- c. In one of the examples, they considered Independence Day (July 4th) a day in the "Assumed Receipt" Calculation. We need clarification as to why we would add a federal holiday into this count. Or did they just make a mistake. Example below:

6/28 Sunday	6/29 Monday	6/30 Tuesday	7/1 Wednesday	7/2 Thursday	7/3 Friday
				Loan Estimate Sent	Day 1 Business Day (More Precise) Federal (Observed) Holiday
7/5 Sunday	7/6 Monday	7/7 Tuesday	7/8 Wednesday	7/9 Thursday	7/10 Friday
	Day 3 Assumed Receipt				

Answer: The mailbox rule assumes that the consumer receives the disclosure 3 business days after it is put in the mail. (§1026.19(f)(1)(iii); Comment 19(f)(1)(ii)-2). Business days for the mailbox rule (for both the LE and CD) are all calendar days except Sundays and 10 Federal holidays. (§1026.2(a)(6)). There are four Federal holidays with a specific date – New Year’s Day, Independence Day, Veterans Day and Christmas Day. If one of these holidays falls on a Saturday, Federal offices may observe the holiday on the preceding Friday. In that case, the Friday will be counted as a business day while the date of the actual holiday will not. (Comment 2(a)(6)-2).

- 5) **Question:** Are we “assuming receipt” of the LE, or will we be requiring documentation supporting receipt of the LE? How are we tracking this if we send them electronically or if we have to mail them?

Answer: You must document the timing of delivery of both disclosures. If the LE or CD is hand delivered, have the member sign to document delivery.

If LE or CD is mailed or e-mailed, note in the file when it was sent. This note will be your proof that the disclosure was sent and the member received it 3 business days after it was sent. (Note that e-mails are also subject to 3 day “mailbox rule”, unless the member acknowledges receipt of email).

- 6) **Question:** There has been little guidance with regards to whether or not Investment Properties are part of TRID. We have seen commentary that states they are not as well as investors stating they will require investment properties to follow TRID? Can you give us your opinion on the matter?

Answer: The rules regarding coverage of TILA and RESPA over investment properties have not changed with the new TRID rules. If a property is being purchased for a “business purpose” (like an investment duplex) where the member does not intend to live in the property for more than 14 days during the coming year, the loan is technically for a business purpose. (§1026.3(a)(1) and Comment 3(a)-4).

Historically however, mortgage lenders have given TILA and RESPA disclosures even for investment properties because there is no harm in over disclosure and the risk of under disclosure is great.

We recommend that policy be continued in the new TRID environment – lenders should issue an LE and CD even for investment property loans.

- 7) **Question:** At one of our seminars, the speaker stated that if the CD is delivered in person, that the 3 day waiting period is no longer required. Have you seen that commentary confirmed by the CFPB? I have not seen that repeated anywhere else since and want to confirm that this was in fact an error.

Answer: The member will always have 3 days to review the CD unless there is a bona fide personal financial emergency (§1026.19(f)(1)(iv)). This was an error by the speaker.

Or perhaps the speaker was saying the 3 day “mailbox rule” is not required if the CD is hand delivered.

- 8) **Question:** If a LE or a CD is in fact delivered in person, is it best practices to have those documents wet signed? Also, can “in person” delivery ever equal the same date as actual received date?

Answer: Yes, the best practice would be to have the document signed if it is hand delivered.

Yes. The date the disclosure is actually received will always be the delivery date for purposes of delivery timing (1026.19(f)(1)(iii); Comment 19(f)(1)(ii)-2). For example, if the CD is actually received on 12/1/15 at 7:00 pm, the 3 day review period begins 12/1/15 and the closing can occur any time of day on 12/4/15.

- 9) **Question:** The pre-approval requirements previously stated that nothing credit related could be made an outstanding condition once a pre-approval was issued. Under the new rules, it appears to state that we are not allowed to ask for documentation before a LE is issued. Can’t one argue that this means a pre-approval is no longer allowed?

Answer: A lender cannot **require** documents prior to the LE being issued. However, if the member requests a pre-approval, they can voluntarily provide information necessary for the pre-approval.

- 10) **Question:** If a property is not known at the time of issuance of a LE, couldn’t a borrower later argue that a “true” intent to proceed could not have been given? but it was commentary on several of the webinars; I’m thinking this is for people who wanted to send a LE to show their fees and for a pre-approval process. I wanted to know how intent can be a true intent when you don’t even know what the property is. It feels like we’d be opening ourselves up to more risk by allowing this.

Answer: Until a lender has received an application, best practice is to not issue a LE. An application includes a property address (§1026.2(a)(3)). (Only until a lender has six pieces of info do they have an “application” and a duty to deliver a loan estimate. These six pieces of info are: consumer’s name, consumer’s income, consumer’s SSN, property address, estimated value of property, loan amount sought.) If a lender wants to show members their fees, they should use the optional “cost estimate.” The cost estimate should not resemble the LE and should have this disclosure: “Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan.” (§1026.19(e)(2)(ii); Comment 19(e)(2)(ii)-1).

- 11) **Question:** Does the state of TX treat consummation as the date of disbursement on a refinance or closing? If disbursement, does this mean that we could in fact issue the CD on the day of closing?

Answer: “Consummation” is the day on which the member becomes contractually obligated on a credit transaction. (§1026.2(a)(13)) In Texas, the member becomes contractually obligated on the day of closing. Therefore, Texas treats consummation as the day of closing, even on refinances or home equities where funding occurs 3 days after closing.

- 12) **Question:** Creditor business day: It is my understanding that we must be able to show that a substantial amount of business must be done on a Saturday to justify Saturday as a creditor business day. If we are able to take application, but our operations personnel do not customarily work on a Saturday, could we open ourselves up to further scrutiny by including Saturday as a business day in our creditor calendar?

Answer: You are referring to “business day” for the LE (the only time business activities of the creditor matter). I would not strain to include Saturday as a business day for LE purposes, because that adds additional pressure on your operations (if application is made on a Wednesday, the LE must be delivered or placed in the mail by the following Saturday. If Saturday is not a business day, then for applications made on Wednesday, the LE would not have to be delivered or placed in the mail until the following Monday.)

- 13) **Question:** Can a CD be sent out before the 7 days of the LE waiting period has expired – OR – do we have to wait the 7 days, disclose CD, then wait the 3 days before closing?

Answer: I have not seen any prohibition on disclosing the CD prior to the 7 day LE waiting period.

- 14) **Question:** Does the LE need to be re-disclosed if the escrows are going to change?

Answer: No. Escrows can change any amount without regard to tolerance considerations and changes in escrow do not require re-disclosure of the LE. (§1026.19(e)(3)(iii)(A)-(C)).

- 15) **Question:** In the below example (Encompass webinar), it states that even if a revised LE is provided, that the reviewer must compare the CD to the original LE...I am confused by this since if it was a valid COC, why would we need to compare to the original LE?

- Appraisal Fee
- 10% Variance Category**
- \$400 Estimate of Title Fees
 - An unreleased lien is discovered additional work raises fee to \$500
 - If total 10% variance category has not been exceeded must compare Loan Estimate \$400 with Closing Disclosure \$500 (even if revised LE provided)

Answer: Only when a changed circumstance has pushed fees in the 10% bucket cumulatively beyond 10% do you get to reset tolerance baselines. (Comment 19(e)(3)(iv)(A)-1.ii)

For example, say your 10% tolerance bucket has a total of \$400 in fees on the LE. Changed circumstances push fees in that bucket up to \$430. Because the fees have not changed by more 10%, you must compare the final fees in 10% bucket to the \$400 initially provided. You are allowed to reissue a LE, but you cannot reset tolerance baselines – so you must compare final fees with initial LE, not revised LE. Because of this, we recommend only re-issuing LE when tolerance baselines reset to avoid confusion.

However, in this example, if changed circumstances push fees in the 10% bucket to \$450, you can reset tolerance baselines and re-issue a LE with \$450 as the new baseline for the 10% tolerance bucket.

16) Will investors require alternative CD for Refis/Home Equities?

Yes. Fannie Mae put out a bulletin on June 30, 2015. They have updated their selling guide. It can be found here:

<https://www.fanniemae.com/content/announcement/sel1507.pdf>

Here is the relevant excerpt regarding which form of CD to use:

“Lenders must use the version of the Closing Disclosure that is applicable to the transaction; for example, the lender may not use the purchase version of the form for a refinance transaction.”

17) If borrower’s name does not fit on limited space provided on LE/CD, can we use an addendum?

Yes. Comment 38(a)(4) provides:

The name and address of each consumer and seller in the transaction must be provided under the heading “Transaction Information.” If the form does not provide enough space to include the required information for each consumer and seller, an additional page may be used and appended to the end of the form provided that the creditor complies

with the requirements of § 1026.38(t)(3). For additional guidance on disclosing multiple borrowers, see comment 37(a)(5)-1.

Comment 37(a)(5)-1 provides:

If there is more than one consumer applying for the credit, § 1026.37(a)(5) requires disclosure of the name and the mailing address of each consumer to whom the Loan Estimate will be delivered. If the names and mailing addresses of all consumers applying for the credit do not fit in the space allocated on the Loan Estimate, an additional page with that information may be appended to the end of the form. For additional information on permissible changes, see § 1026.37(o)(5) and its commentary.

§1026.38(t)(3) just says the LE/CD must look exactly like the model forms

18) How are lender credits disclosed? Paid by Others vs. Lender Credits.

There is no revising lender credits if a some third party service fee is reduced. Specific lender credits go in the “Paid by Others” column next to the specific charge. General lender credits go in the “Lender Credits” row in Section G. See comments below.

Comment 19(e)(3)(i)-5

The disclosure of “lender credits,” as identified in § 1026.37(g)(6)(ii), is required by § 1026.19(e)(1)(i). “Lender credits,” as identified in § 1026.37(g)(6)(ii), represents the sum of non-specific lender credits and specific lender credits. Non-specific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to § 1026.19(e)(1). Specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. Non-specific lender credits and specific lender credits are negative charges to the consumer. The actual total amount of lender credits, whether specific or non-specific, provided by the creditor that is less than the estimated “lender credits” identified in § 1026.37(g)(6)(ii) and disclosed pursuant to § 1026.19(e) is an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). For example, if the creditor discloses a \$750 estimate for “lender credits” pursuant to § 1026.19(e), but only \$500 of lender credits is actually provided to the consumer, the creditor has not complied with § 1026.19(e)(3)(i) because the actual amount of lender credits provided is less than the estimated “lender credits” disclosed pursuant to § 1026.19(e), and is therefore, an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). However, if the creditor discloses a \$750 estimate for “lender credits” identified in § 1026.37(g)(6)(ii) to cover the cost of a \$750 appraisal fee, and the appraisal fee subsequently increases by \$150, and the creditor increases the amount of the lender credit by \$150 to pay for the increase, the credit is not being revised in a way that violates the requirements of § 1026.19(e)(3)(i) because, although the credit increased from the amount disclosed, the amount paid by the consumer did not. However, if the creditor discloses a \$750 estimate for “lender credits” to cover the cost of a \$750 appraisal fee, but subsequently reduces the credit by \$50 because the appraisal fee decreased by \$50, then the requirements of § 1026.19(e)(3)(i) have been violated because, although the amount of the appraisal fee decreased, the amount of the lender credit decreased. See also § 1026.19(e)(3)(iv)(D) and comment 19(e)(3)(iv)(D)-1 for a discussion of lender credits in the context of interest rate dependent charges.

Coment 37(g)(6)(ii)1&2:

Section 1026.19(e)(1)(i) requires disclosure of lender credits as provided in § 1026.37(g)(6)(ii). Comment 19(e)(3)(i)-5 describes such lender credits as payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided under § 1026.37.

For loans where a portion or all of the closing costs are offset by a credit or rebate provided by the creditor (sometimes referred to as “no-cost” loans), whether all or a defined portion of the closing costs disclosed under § 1026.37(f) or (g) will be paid by a credit or rebate from the creditor, the creditor discloses such credit or rebate as a lender credit under § 1026.37(g)(6)(ii). The creditor should ensure that the lender credit disclosed under § 1026.37(g)(6)(ii) is sufficient to cover the estimated costs the creditor represented to the consumer as not being required to be paid by the consumer at consummation, regardless of whether such representations pertained to specific items.

19) Does aggregate adjustment need to be shown on LE (Section G)?

No, it should not be shown. *“The aggregate excrow account adjustment required under §1026.38(g)(3) and 12CFR 1024.17(d)(2) is not included on the Loan Estimate.”*
Comment 37(g)(3)-2.

20) What happens when fees don’t fit onto Page 2 of the Closing Disclosure?

The number of items in the Loan Costs and Other Costs tables can be expanded and deleted to ensure that the Loan Costs and Other Costs tables fit onto page 2 of the Closing Disclosure. (§ 1026.38(t)(5)(iv)(A)) However, items that are required to be disclosed, even if they are not needed (such as Points in the Origination Charges subheading), cannot be deleted. (Comment 38(t)(5)(iv)-1)

The amounts paid by the consumer, seller and others for each item are disclosed. For items paid by the consumer or seller, the amount that is paid at or before closing is also entered into the applicable columns. (§ 1026.38(f)) To the extent that an individual item is paid by different parties to the transaction and both at and before closing, the amounts associated with an item can be entered in multiple columns. (§ 1026.38(f))

The Loan Costs and Other Costs tables can be disclosed on two separate pages of the Closing Disclosure. (§ 1026.38(t)(5)(iv)(B)) When used, these pages are numbered page 2a and 2b. (Comment 38(t)(5)(iv)-3) For an example of this permissible change to the Closing Disclosure, see form H-25(H) of appendix H to Regulation Z.

21) Can you have 4 signature lines on LE/CD?

A signature addendum page needs to be added if there are more than 2 borrowers. The addendum page Must have the Liability after foreclosure heading and warning.
Comment 37(n)-2.