# FAREWELL HUD-1? HELLO TRID!
# *What's TRID?*

1. On December 10, a "Buyer Closing Disclosure" was emailed to you and your buyer-client for a December 14 closing. While some parts of the five page Closing Disclosure document look familiar, it is much longer than the HUD-1 and the format is very different. Are you able to review and explain the document to your buyer? Can the settlement/closing occur on December 14?

2. Your buyer went under contract on October 2, 2015 and applied for a loan on October 5. Settlement was to occur on Monday, November 23. To keep that settlement date, the completed Closing Disclosure had to be *received* by the Buyer by Thursday, November 19.

**Questions:**

What is the Closing Disclosure and why must the Borrower's be prepared so early?
Could the parties in #1 above close on December 14?
What if in #2 the Seller received the *Seller's* Closing Disclosure on November 23?

## INTRODUCTION

As most residential brokers are aware, major changes occur(red) October 3, 2015 in the disclosure and settlement forms used in most residential sales transactions, particularly those subject to the Real Estate Settlement Procedures Act. Specifically, the former Good Faith Estimate will be replaced by a "Loan Estimate" and the HUD-1 settlement statement will be replaced by two Closing Disclosure forms, one for the buyer and one for the seller. While the new rules originally were to be implemented August 1, 2015, that date was postponed to October 3, 2015 as announced by the CFPB in late June. ***These materials are accurate based on existing regulations as of June 25, 2015*** and may be updated if necessary. This section will address:

1) why the changes were made,
2) what transactions are affected,
3) a review of the forms and related requirements, and
4) a broker's responsibility for the accuracy of the new closing disclosure forms.

**First, Brokers,** be *reassured* that your obligations concerning the accuracy of settlement statements have not changed with the advent of the new forms and practices. You will just be looking in new places for the information, and we will show you the parallels between the old and new forms.

## Learning Objectives

Upon completing this Section, you should be able to:

- explain why the revisions to the Good Faith Estimate and HUD-1 were undertaken and the transactions to which the new forms apply;
- identify events that trigger the lender's obligation to provide a Loan Estimate to a borrower;
- identify key elements of the two new Closing Disclosure forms;
- identify critical dates for the delivery of the Closing Disclosure to the borrower and how a lender's failure to meet these disclosure requirements may impact the settlement meeting;
- explain the scope of a broker's duties concerning the accuracy of the Closing Disclosures; and
- identify issues that may cause delays in closings.

# PRIMARY PROBLEM ADDRESSED BY THE NEW RULES

Following the financial collapse in the mortgage and investment sectors in 2007-2009, Congress passed the ***Dodd-Frank Wall Street Reform and Consumer Protection Act*** (hereinafter "***Dodd-Frank Act***"), one of the most comprehensive financial regulatory system reforms in seven decades. The Act became effective July 12, 2010.

The Dodd-Frank Act created the ***Bureau of Consumer Financial Protection***, referred to as the Consumer Financial Protection Bureau (hereinafter, ***CFPB***) and transferred administration and regulation of various consumer protection laws to the new agency. The Act primarily targets lenders, including residential mortgage lenders, and others who extend *consumer credit*.

One of the perceived problems the Dodd-Frank Act sought to remedy in residential real estate sales transactions was the overlap in the disclosures lenders were required to give borrowers under: 1) the Truth-in-Lending Act as revised (hereinafter TILA), and 2) the Real Estate Settlement Procedures Act (hereinafter RESPA).

**Abbreviations**

| | |
|---|---|
| CFPB | Consumer Financial Protection Bureau |
| TRID | TILA/RESPA Integrated Disclosure |
| TILA | Truth-in-Lending Act |
| RESPA | Real Estate Settlement Procedures Act |
| TIL | Truth-in-Lending Statement |
| GFE | Good Faith Estimate |
| HUD-1 | Settlement Statement (authored by U.S. Dept of Housing & Urban Development) |
| LE | Loan Estimate (3 pages) |
| CD | Closing Disclosure |
| BCD | Borrowers' Closing Disclosure (5 pages) |
| SCD | Seller Closing Disclosure (2 pages) |

**LAW THROUGH OCTOBER 2, 2015**

| **TILA Required Disclosures** | **RESPA Required Disclosures** |
|---|---|
| Early TIL | Good Faith Estimate (GFE) |
| *Lenders must provide both within three business days of loan "application."* | |
| Final TIL | HUD-1 statement |
| *Lenders must provide at "consummation" (TILA) or at "settlement" (RESPA).* | |

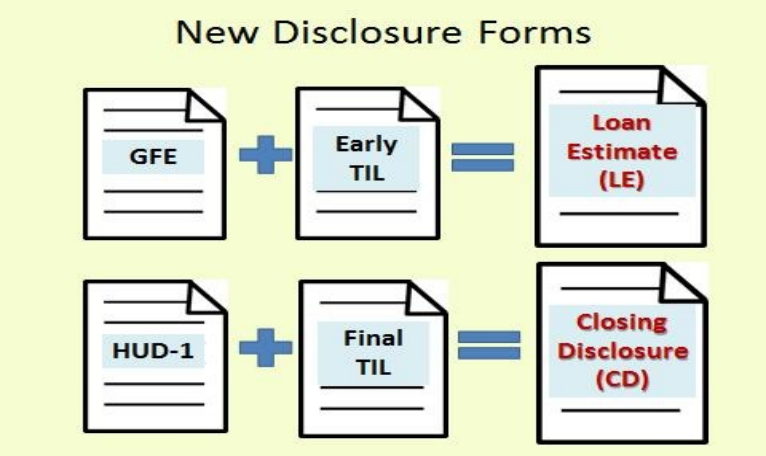
These duplicate disclosures with very similar information that lenders were required to provide under each Act at roughly the same time in the transaction were thought to be burdensome to lenders and confusing to consumers. An ***express mandate*** of the Dodd-Frank Act directed the new CFPB to consolidate or *"integrate" the disclosures under each Act into one form* at inception and closing that will satisfy both laws; hence the **TILA/RESPA Integrated Disclosure (TRID) Rules**:

**NEW RULES EFFECTIVE OCTOBER 3, 2015**

Early TIL & GFE replaced by a new ***"Loan Estimate" (LE)*** to borrower
and

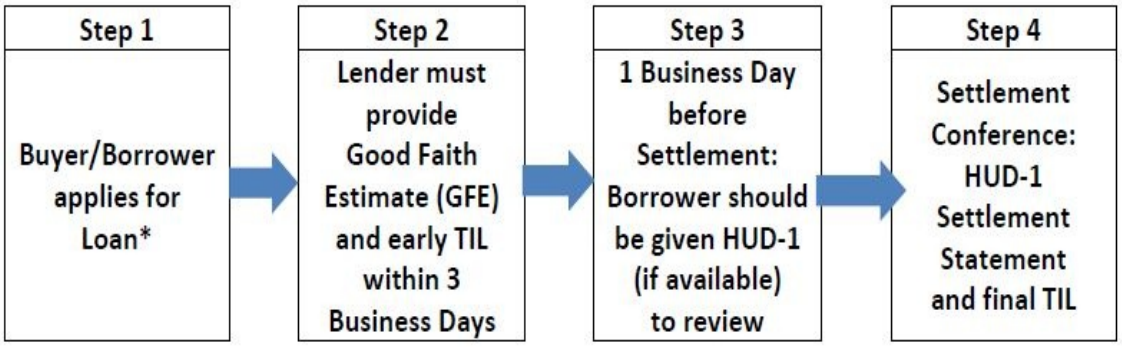
Final TIL and HUD-1 replaced by:
1) ***Closing Disclosure (CD)*** to Borrower (5 pages),
and separate
2) ***Closing Disclosure (CD)*** to Seller (2 pages).

After two years of consumer and industry research, public feedback, usability testing and other public outreach, the CFPB published its final rule in November 2013. The results after testing the new integrated forms on nearly 900 consumers were that the new forms had a statistically significant better performance and were more readily understood by consumers than the old forms.



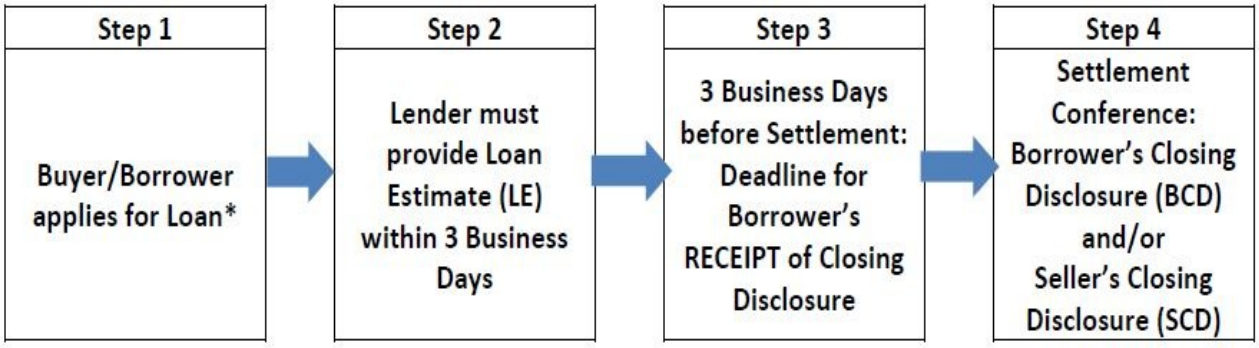
This graph summarizes the timelines for issuance of the early loan disclosures and final HUD-1/Closing Disclosure under pre-October 3, 2015 law and post-October 3, 2015 law.

## Loan Process for Applications RECEIVED BEFORE October 3, 2015




*Loan Application: Buyer has provided legal name, statement of gross income, Social Security Number, property address, estimate of property value, amount of mortgage loan requested, ***and ANY OTHER INFORMATION LENDER DEEMS NECESSARY***.

## Loan Process for Applications RECEIVED ON OR AFTER October 3, 2015




*Loan Application: Buyer has provided legal name, statement of gross income, Social Security Number, property address, estimate of property value, and amount of mortgage loan requested.

# WHAT DOES THIS MEAN FOR YOU AS A BROKER?

## Effective Date?

The new TRID rules apply to **loan applications received on or after October 3, 2015** given the postponed implementation date (previously August 1, 2015). The triggering event is the date the loan "application" (defined shortly) is received.

**NOTE:** A lender who receives a loan application on or before October 2, 2015 must comply with existing law until October 3, 2015. This means the lender must provide the early TIL and GFE *and, at closing*, the lender must provide a final TIL and HUD-1 (if RESPA-governed), *even though settlement/closing occurs* ***after*** *October 3, 2015.*

> **GENERAL RULE:** *if a transaction begins with the old forms (early TIL and GFE), it must conclude with the old forms (final TIL and HUD-1).*

## What Transactions Are Affected?

**Real Estate Settlement Procedures Act (RESPA)**

RESPA applies to "*federally related mortgage loans*," loosely defined as loans made by institutional lenders *o*r to be sold on the secondary market that are secured by a lien on real property on which a one-to-four family dwelling is or will be situated within two years. It covers any loan that would be secured by a lien against such property, whether a purchase or refinance loan, home equity loan, home improvement loan, or reverse mortgage. If a transaction involved a federally related mortgage loan, then the lender was required to provide the borrower with a Good Faith Estimate within three days of loan application and use the HUD-1 statement at settlement.

**Truth-in-Lending Act (TILA)**

The scope of coverage under the **Truth-in-Lending Act (TILA)** is broader than that of RESPA. TILA laws and regulations apply to *any one who advertises* ***or*** *makes loans for a personal, family or household purpose* that involve either 1) a finance charge **or** 2) are payable in more than four installments. TILA laws impact brokerage in that

- most ***closed-end loans*** to natural persons *secured by a lien against real property* owned by the borrower are subject to TILA, whether the property has a primary residence, secondary residence, vacation home or is vacant land, and regardless of the loan amount, so long as the loan proceeds are for a personal, family or household purpose.

AND

- the laws apply not only to banks and savings and loan institutions, but to finance companies, mortgage companies and anyone who extends consumer credit as defined in the Act more than five times per year.

***Must brokers know whether a transaction is governed by TILA or RESPA?***

**NO.** Brokers should have a general awareness of what sales transactions are covered by the new rules, but it is the *lenders* who must determine which law applies.

## Revised Rules as of ~~August~~ October 3, 2015

*The new TILA-RESPA integrated disclosure rules (**TRID rules**) were made part of the **Truth-in-Lending Act**.* The new integrated disclosure forms, namely the *Loan Estimate (LE)* and the *Closing Disclosures (CD)*, ***must*** be used by lenders in transactions involving federally related mortgage loans governed by RESPA. What triggers the new rules is:

1) receipt of a *loan application on or after October 3, 2015*

2) for a loan that is:

A) *a "federally related mortgage loan"* **(RESPA)**

**or**

B) for *personal, family or household purposes*, i.e., a consumer loan, *and will be secured by a lien against real property owned by the borrower* **(TILA)**.

The following table lists the transactions that are subject to the new TRID rule.

| Type of Transaction | Subject to New Rule? |
|---|---|
| **Loan for Home Purchase or Refinance** | **Yes.** |
| **Loan for Vacant Land Purchase** | **Yes.** |
| **Construction Loan** | **Yes.** |
| **Loan for Purchase of 25-acre or more Tract of Land NOT to be used for Business Purpose** | **Yes.** |
| **Cash Purchase (ANY property type)** | **No.*** |
| **Seller-Financed Purchase (ANY property type) IF extends less than 5 loans per year** | **No.*** |
| **Home Equity Line of Credit (open-end)** | **No.*** |
| **Reverse Mortgage** | **No.*** |
| **Loan for Purchase of Property to be used for Business, Commercial or Agricultural Purpose** | **No.*** |
| **Loan for Manufactured Home NOT attached to Real Property** | **No.*** |
| **Loan for Purchase of Property from Creditor that/who extends 5 or fewer consumer loans/year** | **No.*** |

* HUD-1 or other settlement statement will continue to be used.

*Question: May lenders use the Loan Estimate and Closing Disclosure forms if they wish in excluded transactions, even though not required?*

**NO**. The CFPB has specifically stated that the new forms may not be used in transactions that don't involve a covered loan, and previously said that they should not be used prior to the implementation date, except in test markets. Lenders issuing loans not covered by the TILA-RESPA integrated rules may continue to use the existing GFE, HUD-1 statement, and Truth-in-Lending disclosures or other forms that comply with applicable law. There are no laws requiring any particular closing/settlement statement be used in cash sales transactions, other than the prohibition against using the new closing disclosures.

*Question: **Must** the new forms be used in **all** "covered transactions"?*

**NO.** There may be transactions that are ***not*** subject to RESPA, but that do fall within TILA, *i.e.*, *a transaction involving a loan to a natural person for personal, household, or family purposes that is secured by a lien on real property owned by the borrower.* In transactions *subject only to TILA*, use of the new Loan Estimate (LE) and Closing Disclosure (CD) is voluntary, but if a lender uses some other disclosure form, it must contain the same information and be in a format substantially similar to the Loan Estimate and Closing Disclosure. Given that, most lenders probably will use the new LE and CD forms in both RESPA and applicable TILA governed transactions.

The **moral of the story is** .... the HUD-1 isn't/hasn't gone entirely. Brokers may still see it used by settlement agents in closing transactions involving a cash sale, home equity line of credit, reverse mortgage, or purchase of property for a commercial, agricultural or business purpose. Some closing attorneys may continue to use the HUD-1 in conjunction with the new Loan Estimate and Closing Disclosures even in covered transactions to authorize disbursement of the sale proceeds.

Understand that **compliance with the integrated disclosure requirements falls on the lenders or persons/entities extending the consumer credit**. The lender must determine if the transaction is subject to RESPA or TILA and then utilize the correct forms. Neither RESPA nor the revised TILA impose any new liability on real estate brokers *unless* a broker attempts to act as the settlement agent *which is not recommended*. It is highly unlikely that lenders subject to the new regulations will permit a real estate broker to act as the settlement agent in the future because lenders remain totally liable for the acts of any mortgage broker or settlement agent the lender allows to perform any of the lender's duties.

> **NOTE:** Because of this potential liability, some major lenders announced in Spring 2015 that they would prepare all loan documents in-house for which the lender is liable, including the Closing Disclosures, and settlement agents would not be permitted to make any changes to the Closing Disclosures. In the past, settlement agents often made changes to the HUD-1, but the revised HUD-1 still had to be approved by the lender before the borrower signed it and the settlement meeting concluded.

To reassure brokers and before discussing the specifics of the new Loan Estimate and Closing Disclosures, printed on the following page is an excerpt from what the CFPB calls its Closing Factsheet titled "Will the new mortgage disclosures delay my closing?" *According to the CFPB, there are very few changes that will require a new three day waiting period.*

Consumer Financial Protection Bureau

# Will the new mortgage disclosures delay my closing?

## The answer is NO for just about everybody.

For mortgage applications submitted on or after August 1, 2015, lenders must give you new, easier-to-use disclosures about your loan three business days before closing. This gives you time to review the terms of the deal before you get to the closing table.

Many things can change in the days leading up to closing. Most changes will not require your lender to give you three more business days to review the new terms before closing. The new rule allows for ordinary changes that do not alter the basic terms of the deal.

### Only THREE changes require a new 3-day review:

1. **The APR (annual percentage rate) increases** by more than 1/8 of a percent for fixed-rate loans or 1/4 of a percent for adjustable loans.[1] A **decrease in APR will not** require a new 3-day review if it is based on changes to interest rate or other fees.
2. **A prepayment penalty is added,** making it expensive to refinance or sell.
3. **The basic loan product changes,** such as a switch from fixed rate to adjustable interest rate or to a loan with interest-only payments.

[1] Lenders have been required to provide a 3-day review for these changes in APR since 2009.

### NO OTHER changes require a new 3-day review:

There has been much misinformation and mistaken commentary around this point. Any other changes in the days leading up to closing do not require a new 3-day review, although the lender will still have to provide an updated disclosure.

For example, the following circumstances *do not* require a new 3-day review:

- **Unexpected discoveries on a walk-through** such as a broken refrigerator or a missing stove, even if they require seller credits to the buyer.
- **Most changes to payments made at closing,** including the amount of the real estate commission, taxes and utilities proration, and the amount paid into escrow.
- **Typos found at the closing table.**

# THE LOAN ESTIMATE (LE)

*Are **brokers** responsible for the accuracy of the Loan Estimate?* **NO**. The LE is issued by the lender to the buyer-borrower and a broker may never even see the LE.

*Should brokers know when a lender must provide a borrower with a Loan Estimate?* In general terms, yes. **The bottom line for brokers is they should be aware that**:

1. borrowers in covered transactions are entitled to receive a LE within three business days of loan application,
   and
2. the purpose of the LE is to allow the consumer to shop and compare the cost of the desired credit.

Borrowers are entitled to receive the new Loan Estimate under similar circumstances as triggered a lender's obligation to provide the old Good Faith Estimate. The primary purpose of the LE is to allow borrowers to clearly see and compare the costs of the credit/loan so they may shop among lenders.

The LE resembles the former Good Faith Estimate it replaces. Clearly identified on the first page is:

1) the loan amount;
2) the interest rate;
3) whether there is a prepayment penalty or a balloon payment;
4) the projected monthly principal and interest payment;
5) the projected real property taxes and homeowner's insurance;
6) the estimated closing costs; and
7) the estimated cash needed to close.

## What is a "Loan Application?"

The TRID rules impose two key requirements on lenders relating to the borrower's loan application:

1. Lenders must provide the LE within three business days of loan "application," defined as the lender's receipt of the following information from the borrower:
   1) legal name;
   2) statement of gross income;
   3) Social Security Number (to obtain a credit report);
   4) property address;
   5) estimate of property value; and
   6) amount of mortgage loan requested.

   ***NOTE:*** the catch-all "any other information deemed necessary by the loan originator" has been eliminated. The lender may request other information, such as type and term of loan, bank account balances, and purchase price of the property, but ***may not require documentary support of the information provided prior to issuing a LE***. Once a lender has the six pieces of information listed above, it must provide the LE to the prospective borrower within three business days *unless* the consumer withdraws the application or the lender determines it can't approve the loan as requested and so notifies the consumer.

2. Lenders may not charge the consumer any fees prior to providing the LE *other than* a reasonable fee to pay for a credit report until the consumer indicates an intent to proceed. The CFPB in the Commentary to the regulation has ruled that "imposing a fee" prior to providing a LE includes requiring the consumer to provide a check or credit card number to pay for processing and other fees, even if the check or credit card will not be cashed or billed until after the consumer decides to proceed with the loan.

**Accuracy of LE**

A LE must be accurate. Within variation limits (formerly "tolerance" limits), lenders will be bound by the estimated costs stated, unless changes occur that permit issuance of a revised LE. Revisions may be permitted due to changed circumstances (i.e., unexpected events or events beyond a person's control) or if the borrower's eligibility changes or if the borrower requests a change. While Loan Estimates typically may not be revised by a lender, if circumstances permit or require a revised LE, then it must be delivered/mailed to the borrower within three business days after the lender's receipt of the information that caused the revision and it must be *received* by the borrower *at least four business days prior to consummation*.

## Permissible Variations/Tolerance Limits

Lenders remain bound by the "tolerance limits" first imposed in 2009/2010, although the former tolerance limits are now called **permissible "*variations*"** for loans subject to the new TILA-RESPA rules. It is important to understand that *costs estimated on the LE may be **less** at settlement/consummation without causing any problem — they just may not increase beyond the permissible variations*, which continue to be:

**No Variation Allowed**

1) any fee paid to the lender, mortgage broker, or affiliates of either;
2) lender required services for which the borrower may not shop; and
3) transfer taxes (in North Carolina, buyers don't typically pay a "transfer tax" as in some other States. The primary "transfer tax" in NC is excise tax paid by the seller, although a few counties may impose a transfer tax that also is paid by the seller.)

**Ten Percent (10%) Variation Allowed**

1) Recording fees;
2) Charges for third party services ***if:***
   A) no part of the charge is paid to/retained by the lender or the lender's affiliates (as otherwise would be in zero variation category);
   *and*
   B) the consumer is permitted to shop for the service *but chooses a provider on the lender's written list of providers*.

**NOTE**: Costs in the no variation category may not be more at settlement than the amount stated on the LE. Costs for any particular service in the ten percent variation category may be more at settlement than reflected on the LE *so long as the total costs at settlement for services in the 10% category do not exceed the total costs for those services as stated on the LE by more than ten percent*. If there is a violation in either category, the lender must reimburse the borrower the excess costs, generally within sixty (60) days of settlement. As a practical matter, the "cure" for the violation most often will occur at the settlement meeting.

**Services For Which the Borrower May Shop**

Lenders may allow borrowers to shop for certain required settlement services but must provide the borrower with a list of those services and identify at least one provider for each settlement service. If the borrower chooses a service provider listed by the lender, then that cost is included in the 10% variation category. If the borrower uses a provider not on the lender's list, then the lender has no responsibility for the amount of the fee the service provider charges the borrower. Lenders have no liability for fees charged by providers of services that are not required by the lender/creditor, *e.g.*, home inspection, owner's title insurance.

## Brokers' Responsibility for Loan Estimate

Brokers should have a general understanding of:
1) what transactions are subject to TRID
and
2) the timing and purpose of the Loan Estimate.

Brokers working with buyers in covered transactions should be aware that the buyer-borrower is entitled to receive the Loan Estimate within three business days of loan application (i.e., the lender's receipt of 6 items of information) and that the purpose is to allow buyers to compare the cost of the desired credit. *Note:* most of the information on the Loan Estimate relates to the loan itself and there is no information regarding the borrowers' amount or source of income, monthly expenses or credit score.

# THE CLOSING DISCLOSURES (CD)

*Brokers have the same responsibilities for the Closing Disclosure as for the HUD-1 or any other settlement statement*. These requirements will be discussed later in this section under "Broker's Responsibility."

By November 2015, brokers involved in residential sales transactions should see the new Closing Disclosures at settlement, whether in lieu of or in addition to some version of the HUD-1 statement. Recall that the *new TRID rules apply to loan applications received on or after October 3, 2015*. Thus, all those loan applications submitted in August and September 2015 that aren't closing until after October 3, 2015 will nonetheless use the current HUD-1 statement and final TIL at settlement. Remember, the rule is:

- if a transaction begins with the old forms it will use the old forms at settlement;
- if a transactions begins with the new forms, it will use the new forms at settlement.

Under the new TRID rules, there may be **two separate Closing Disclosures (CD)** at settlement, one for the borrower/buyers (5 pages) and the other for the sellers (2 pages). A review of each Closing Disclosure reveals little new information — just new locations.

The **Buyer's Closing Disclosure** details the funds received and expenses paid on the borrower's behalf and incorporates other loan disclosures previously found in the final TIL.

- Information **on p 2** of the HUD-1 is now **on p 2** of the Buyer's CD.
- Information **on p 1** of the HUD-1 is now **on p 3** of the Buyer's CD.
- Pages 1, 4 and 5 contain TIL disclosures

The **Seller's CD** summarizes on page 1 the seller's transaction costs and amounts due the seller, while page 2 of the seller's CD exists primarily to show any buyer expenses the seller may have paid.

*Why are there two separate Closing Disclosure forms?* The Buyers' CD includes non-public TIL required information about the buyers' loan, such as the interest rate, term, down payment, amount financed, etc.. Due to concerns that disclosure to the seller might violate privacy components under the federal Gramm-Leach-Bliley Act, the CFPB decided that settlement agents should be allowed to provide the buyer and seller with separate versions of the Closing Disclosures showing only information relevant to that party's side of the transaction, i.e., all credits and debits.

***Two Closing Disclosures?***

Despite the privacy concerns, the TRID rules permit a settlement agent to provide the seller with a separate Closing Disclosure ***or*** with a copy of the Buyer/Borrowers' Closing Disclosure *so long as* it contains all the seller's transaction information. If the settlement agent provides the seller with a separate CD, then the settlement agent must also provide a copy of the Seller CD to the borrowers' lender, <u>but not to the borrower</u>.

While the buyer will not necessarily see the Sellers' CD, the buyer will have a summary of the sellers' side of the transaction on page 3 of the buyer's CD, as with the current HUD-1. Sample Seller and Buyer Closing Disclosures are printed at the end of this section based on a hypothetical fact situation.

## <u>Signatures and Authority to Disburse</u>

As with many forms, the new Closing Disclosures may be revised over the next several months. One interesting omission is that there is no signature line on the seller's CD; while there is a signature line on the buyer's CD, the buyer signs merely to acknowledge that s/he has received the form. Unlike the parties' signatures on the HUD-1, neither form authorizes the settlement agent to disburse the funds in accordance with the Closing Disclosures. Thus, settlement agents or lenders most likely will devise a form for the parties to sign authorizing disbursement of the sale proceeds as indicated on the Closing Disclosures.

***Brokers, be aware that more new forms may be released after October 2015.***

## Who Bears the Primary Burden?

The new TILA-RESPA integrated disclosure rules are directed at *persons or entities extending consumer credit or dealing with federally insured mortgage loans*. It is those lenders who are responsible for ensuring compliance with the new rules, whether in-house or through authorized agents. Lenders who permit mortgage brokers to issue the Loan Estimate or who permit settlement agents to prepare or make modifications to the Closing Disclosures are financially liable for the actions of their agents, including clerical errors. Violations can be costly — *minimally* $5,000 per day per occurrence and $25,000 per day if reckless, if not more.

Understandably, the financial and residential closing attorney worlds have been in upheaval attempting to plan for the new requirements and timetables. Many residential closing attorneys have had to significantly enhance the security features of their offices to protect confidential client information received from lenders in order to remain an approved settlement attorney on a lender's list. Many lenders will require all email communications to be encrypted and that access to attorney/staff work areas be restricted to employees. A frequent comment is what HIPAA did to medical offices, TRID has done to closing attorney offices.

On June 3 2015, Richard Cordray, Director of the CFPB, issued a letter to various senators in response to a letter from Congress concerning implementation of the new TRID disclosures. After explaining the many ways the CFPB attempted "... to support industry implementation and to help creditors, vendors, and others affected by the Rule to better understand, operationalize, and prepare to comply with the Rule's new streamlined disclosures....," Mr. Cordray replied to a request from Congress for a grace period in implementing the new Rule as follows:

> ...we continue to work with industry, consumers, and other stakeholders to answer questions, provide guidance, and support a smooth transition for the mortgage market. As we do so, and in response to considerable input we have received from you and your constituents, I have spoken with our fellow regulators to clarify that our oversight of the implementation of the Rule will be sensitive to the progress made by those entities that have squarely focused on making good-faith efforts to come into compliance with the Rule on time. My statement here of this approach is intended to ease some of the concerns we have heard about this transition to the new process .....

On June 17, Mr. Cordray, on behalf of the CFPB, issued the following announcement officially postponing the implementation date of the new TRID rules.

> "The CFPB will be issuing a proposed amendment to delay the effective date of the Know Before You Owe rule until October 1, 2015. We made this decision to correct an administrative error that we just discovered in meeting the requirements under federal law, which would have delayed the effective date of the rule by two weeks. We further believe that the additional time included in the proposed effective date would better accommodate the interests of the many consumers and providers whose families will be busy with the transition to the new school year at that time."
>
> The public will have an opportunity to comment on this proposal and a final decision is expected shortly thereafter.

The proposed amendment published June 24, 2015 postponed the implementation date to October 3, 2015.

A completed HUD-1 is compared with completed pages 2 and 3 of the Borrower Closing Disclosure on the following 4 pages to illustrate the similarity between these two forms.

# A. Settlement Statement (HUD-1)

**B. Type of Loan**

| | | | |
|---|---|---|---|
| 1. ☐ FHA 2. ☐ RHS 3. ☐ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins. | 6. File Number: | 7. Loan Number: | 8. Mortgage Insurance Case Number: |

**C. Note:** This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

| D. Name & Address of Borrower: | E. Name & Address of Seller: | F. Name & Address of Lender: |
|---|---|---|
| EXAMPLE FACT SITUATION | EXAMPLE FACT SITUATION | EXAMPLE FACT SITUATION |
| G. Property Location: EXAMPLE FACT SITUATION | H. Settlement Agent: EXAMPLE FACT SITUATION | I. Settlement Date: November 23 |
| | Place of Settlement: EXAMPLE FACT SITUATION | |

**J. Summary of Borrower's Transaction**

| | |
|---|---|
| **100. Gross Amount Due from Borrower** | |
| 101. Contract sales price | $249,650.00 |
| 102. Personal property | |
| 103. Settlement charges to borrower (line 1400) | $8,625.71 |
| 104. | |
| 105. | |
| **Adjustment for items paid by seller in advance** | |
| 106. City/town taxes to | |
| 107. County taxes Nov 24 to Dec 31 | $257.26 |
| 108. Assessments to | |
| 109. | |
| 110. | |
| 111. | |
| 112. | |
| **120. Gross Amount Due from Borrower** | $258,532.97 |
| **200. Amount Paid by or in Behalf of Borrower** | |
| 201. Deposit or earnest money | $3,500.00 |
| 202. Principal amount of new loan(s) | $212,000.00 |
| 203. Existing loan(s) taken subject to | |
| 204. | |
| 205. | |
| 206. Due Diligence Fee | $500.00 |
| 207. | |
| 208. | |
| 209. | |
| **Adjustments for items unpaid by seller** | |
| 210. City/town taxes to | |
| 211. County taxes to | |
| 212. Assessments to | |
| 213. | |
| 214. | |
| 215. | |
| 216. | |
| 217. | |
| 218. | |
| 219. | |
| **220. Total Paid by/for Borrower** | $216,000.00 |
| **300. Cash at Settlement from/to Borrower** | |
| 301. Gross amount due from borrower (line 120) | $258,532.97 |
| 302. Less amounts paid by/for borrower (line 220) | ( $216,000.00 ) |
| **303. Cash** ☒ **From** ☐ **To Borrower** | $42,532.97 |

**K. Summary of Seller's Transaction**

| | |
|---|---|
| **400. Gross Amount Due to Seller** | |
| 401. Contract sales price | $249,650.00 |
| 402. Personal property | |
| 403. | |
| 404. | |
| 405. | |
| **Adjustment for items paid by seller in advance** | |
| 406. City/town taxes to | |
| 407. County taxes nov 24 to Dec 31 | $257.26 |
| 408. Assessments to | |
| 409. | |
| 410. | |
| 411. | |
| 412. | |
| **420. Gross Amount Due to Seller** | $249,907.26 |
| **500. Reductions In Amount Due to seller** | |
| 501. Excess deposit (see instructions) | |
| 502. Settlement charges to seller (line 1400) | $16,044.00 |
| 503. Existing loan(s) taken subject to | |
| 504. Payoff of first mortgage loan | $138,425.00 |
| 505. Payoff of second mortgage loan | |
| 506. Due Diligence Fee | $500.00 |
| 507. | |
| 508. | |
| 509. | |
| **Adjustments for items unpaid by seller** | |
| 510. City/town taxes to | |
| 511. County taxes to | |
| 512. Assessments to | |
| 513. | |
| 514. | |
| 515. | |
| 516. | |
| 517. | |
| 518. | |
| 519. | |
| **520. Total Reduction Amount Due Seller** | $154,969.00 |
| **600. Cash at Settlement to/from Seller** | |
| 601. Gross amount due to seller (line 420) | $249,907.26 |
| 602. Less reductions in amounts due seller (line 520) | ( $154,969.00 ) |
| **603. Cash** ☒ **To** ☐ **From Seller** | $94,938.26 |

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

## Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

| | Loan Estimate | Final | Did this change? |
|---|---|---|---|
| Total Closing Costs (J) | | | |
| Closing Costs Paid Before Closing | | | |
| Closing Costs Financed (Paid from your Loan Amount) | | | |
| Down Payment/Funds from Borrower | | | |
| Deposit | | | |
| Funds for Borrower | | | |
| Seller Credits | | | |
| Adjustments and Other Credits | | | |
| **Cash to Close** | | | |

## Summaries of Transactions

Use this table to see a summary of your transaction.

### BORROWER'S TRANSACTION

| | |
|---|---|
| **K. Due from Borrower at Closing** | 258,532.97 |
| Sale Price of Property | 249,650.00 |
| Sale Price of Any Personal Property Included in Sale | 0 |
| Closing Costs Paid at Closing (J) | 8625.71 |
| **Adjustments** | |
| **Adjustments for Items Paid by Seller in Advance** | |
| City/Town Taxes 11/24 to 12/31/15 | 257.26 |
| County Taxes to | |
| Assessments to | |
| **L. Paid Already by or on Behalf of Borrower at Closing** | 216,000.00 |
| Deposit | 3500.00 |
| Loan Amount | 212,000.00 |
| Existing Loan(s) Assumed or Taken Subject to | |
| Seller Credit | |
| **Other Credits** | |
| Due Diligence Fee | 500.00 |
| **Adjustments** | |
| **Adjustments for Items Unpaid by Seller** | |
| City/Town Taxes to | |
| County Taxes to | |
| Assessments to | |

### CALCULATION

| | |
|---|---|
| Total Due from Borrower at Closing (K) | 258,532.97 |
| Total Paid Already by or on Behalf of Borrower at Closing (L) | 216,000.00 |
| **Cash to Close ☒ From ☐ To Borrower** | 42,532.97 |

### SELLER'S TRANSACTION

| | |
|---|---|
| **M. Due to Seller at Closing** | 249,907.26 |
| Sale Price of Property | 249,650.00 |
| Sale Price of Any Personal Property Included in Sale | 0 |
| **Adjustments for Items Paid by Seller in Advance** | |
| City/Town Taxes to 12/31/15 | 257.26 |
| County Taxes to | |
| Assessments to | |
| **N. Due from Seller at Closing** | 154,969.00 |
| Excess Deposit | 16,044.00 |
| Closing Costs Paid at Closing (J) | |
| Existing Loan(s) Assumed or Taken Subject to | |
| Payoff of First Mortgage Loan | 138,425.00 |
| Payoff of Second Mortgage Loan | |
| Due Diligence Fee | 500.00 |
| Seller Credit | |
| **Adjustments for Items Unpaid by Seller** | |
| City/Town Taxes to | |
| County Taxes to | |
| Assessments to | |

### CALCULATION

| | |
|---|---|
| Total Due to Seller at Closing (M) | 249,907.26 |
| Total Due from Seller at Closing (N) | 154,969.00 |
| **Cash ☐ From ☒ To Seller** | 94,938.26 |

## L. Settlement Charges

| 700. Total Real Estate Broker Fees | Paid From Borrower's Funds at Settlement | Paid From Seller's Funds at Settlement |
|---|---|---|
| Division of commission (line 700) as follows : | | |
| 701. $ 7,489.50 to Buyer's Firm | | |
| 702. $ 7,489.50 to Seller's Firm | | |
| 703. Commission paid at settlement | | $14,979.00 |
| 704. | | |

| 800. Items Payable in Connection with Loan | | | | |
|---|---|---|---|---|
| 801. Our origination charge | $ 1,590.00 | (from GFE #1) | | |
| 802. Your credit or charge (points) for the specific interest rate chosen | $ 2,120.00 | (from GFE #2) | | |
| 803. Your adjusted origination charges | | (from GFE #A) | $3,710.00 | |
| 804. Appraisal fee to $450 POC | | (from GFE #3) | | |
| 805. Credit report to $55 POC | | (from GFE #3) | | |
| 806. Tax service to | | (from GFE #3) | | |
| 807. Flood certification to | | (from GFE #3) | | |
| 808. Application Fee | | | $280.00 | |
| 809. Pest Inspection (typically inserted in section 1300) $65 POC | | | | |
| 810. | | | | |
| 811. | | | | |

| 900. Items Required by Lender to be Paid in Advance | | | | |
|---|---|---|---|---|
| 901. Daily interest charges from nov 23 to nov 30 @ $ 37.75 /day | | (from GFE #10) | $302.03 | |
| 902. Mortgage insurance premium for 12 months to | | (from GFE #3) | $840.00 | |
| 903. Homeowner's insurance for 1 years to | | (from GFE #11) | $684.00 | |
| 904. | | | | |

| 1000. Reserves Deposited with Lender | | | | | | |
|---|---|---|---|---|---|---|
| 1001. Initial deposit for your escrow account | | | | | (from GFE #9) | $1,077.68 | |
| 1002. Homeowner's insurance | 2 | months @ $ 57.00 | per month | $ 114.00 | | | |
| 1003. Mortgage insurance | 2 | months @ $ 70.00 | per month | $ 140.00 | | | |
| 1004. Property Taxes | 4 | months @ $ 205.92 | per month | $ 823.68 | | | |
| 1005. | | months @ $ | per month | $ | | | |
| 1006. | | months @ $ | per month | $ | | | |
| 1007. Aggregate Adjustment | | | | -$ | | | |

| 1100. Title Charges | | | | |
|---|---|---|---|---|
| 1101. Title services and lender's title insurance | | (from GFE #4) | $1,155.40 | |
| 1102. Settlement or closing fee | $ 650.00 | | | |
| 1103. Owner's title insurance | | (from GFE #5) | $64.60 | |
| 1104. Lender's title insurance | $ 505.40 | | | |
| 1105. Lender's title policy limit $ | | | | |
| 1106. Owner's title policy limit $ | | | | |
| 1107. Agent's portion of the total title insurance premium to | $ | | | |
| 1108. Underwriter's portion of the total title insurance premium to | $ | | | |
| 1109. Deed Preparation | | | | $85.00 |
| 1110. | | | | |
| 1111. | | | | |

| 1200. Government Recording and Transfer Charges | | | | |
|---|---|---|---|---|
| 1201. Government recording charges | | (from GFE #7) | $82.00 | |
| 1202. Deed $ 26.00 | Mortgage $ 56.00 | Release $ | | |
| 1203. Transfer taxes | | (from GFE #8) | | |
| 1204. City/County tax/stamps | Deed $ | Mortgage $ | | |
| 1205. State tax/stamps | Deed $ | Mortgage $ | | $500.00 |
| 1206. | | | | |

| 1300. Additional Settlement Charges | | | | |
|---|---|---|---|---|
| 1301. Required services that you can shop for | | (from GFE #6) | | |
| 1302. Survey | $ | | $400.00 | |
| 1303. Home Warranty | $ | | | $450.00 |
| 1304. Courier Fees | | | $30.00 | $30.00 |
| 1305. Home Inspection $325 POC | | | | |

| 1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K) | $8,625.71 | $16,044.00 |
|---|---|---|

## Closing Cost Details

| Loan Costs | Borrower-Paid At Closing | Borrower-Paid Before Closing | Seller-Paid At Closing | Seller-Paid Before Closing | Paid by Others |
|---|---|---|---|---|---|
| **A. Origination Charges** | $3,990.00 | | | | |
| 01 0.75% of Loan Amount (Points) | 1590.00 | | | | |
| 02 1 loan discount point | 2120.00 | | | | |
| 03 Application fee | 280.00 | | | | |
| 04 | | | | | |
| 05 | | | | | |
| 06 | | | | | |
| 07 | | | | | |
| 08 | | | | | |
| **B. Services Borrower Did Not Shop For** | $505.00 | | | | |
| 01 Appraisal Fee - Value Appraisals | | 450.00 | | | |
| 02 Credit Report | | 55.00 | | | |
| 03 | | | | | |
| 04 | | | | | |
| 05 | | | | | |
| 06 | | | | | |
| 07 | | | | | |
| 08 | | | | | |
| 09 | | | | | |
| 10 | | | | | |
| **C. Services Borrower Did Shop For** | $1220.40 | | $85.00 | | |
| 01 Pest Inspection - Grub Busters Inc | | 65.00 | | | |
| 02 Attorney Fee | 650.00 | | | | |
| 03 Title Insurance - lender policy Tarheel Title, LLC | 505.40 | | | | |
| 04 Deed preparation | | | 85.00 | | |
| 05 | | | | | |
| 06 | | | | | |
| 07 | | | | | |
| 08 | | | | | |
| **D. TOTAL LOAN COSTS (Borrower-Paid)** | $5715.40 | | | | |
| Loan Costs Subtotals (A + B + C) | 5145.40 | 570.00 | 85.00 | | |

| Other Costs | | | | | |
|---|---|---|---|---|---|
| **E. Taxes and Other Government Fees** | $82.00 | | $500.00 | | |
| 01 Recording Fees Deed: $26.00 Mortgage: $56.00 | 82.00 | | | | |
| 02 Excise Tax | | | 500.00 | | |
| **F. Prepaids** | $1826.03 | | | | |
| 01 Homeowner's Insurance Premium ( mo.) 1 year | 684.00 | | | | |
| 02 Mortgage Insurance Premium ( mo.) 1 year | 840.00 | | | | |
| 03 Prepaid Interest (37.7534 per day from 11/23 to 11/30 ) | 302.03 | | | | |
| 04 Property Taxes ( mo.) | | | | | |
| 05 | | | | | |
| **G. Initial Escrow Payment at Closing** | $1077.68 | | | | |
| 01 Homeowner's Insurance $57 per month for 2 mo. | 114.00 | | | | |
| 02 Mortgage Insurance $70 per month for 2 mo. | 140.00 | | | | |
| 03 Property Taxes 205.92 per month for 4 mo. | 823.68 | | | | |
| 04 | | | | | |
| 05 | | | | | |
| 06 | | | | | |
| 07 | | | | | |
| 08 Aggregate Adjustment | | | | | |
| **H. Other** | $819.60 | | | | |
| 01 Home Inspection - A-1 Home Inspections | | 325.00 | | | |
| 02 Survey - Line Experts Inc | 400.00 | | | | |
| 03 Home Warranty Premium | | | 450.00 | | |
| 04 Owner's title insurance premium | 64.60 | | | | |
| 05 Brokerage Fee - ABC Realty | | | 7489.50 | | |
| 06 Brokerage Fee - XYZ Realty | | | 7489.50 | | |
| 07 Courier Fees - overnight to Buyers' Lender | 30.00 | | | | |
| 08 Courier Fees - payoff to Seller's lender | | | 30.00 | | |
| **I. TOTAL OTHER COSTS (Borrower-Paid)** | $3805.31 | | | | |
| Other Costs Subtotals (E + F + G + H) | 3480.31 | 325.00 | | | |

| | | | | |
|---|---|---|---|---|
| **J. TOTAL CLOSING COSTS (Borrower-Paid)** | $9520.71 | | | |
| Closing Costs Subtotals (D + I) | 8625.71 | 895.00 | $16,044.00 | |
| Lender Credits | | | | |

## Biggest Impact for Brokers: Delivery of Borrower Closing Disclosure

The change that may have the most significant impact for brokers is the requirement that ***the* lender *must ensure that the* borrower receives *the completed Borrower Closing Disclosure* three business days prior to consummation**. (For North Carolina brokerage purposes, consider "consummation" as equivalent to settlement meeting/closing; *technically*, however, it is defined as the ***point at which the borrower becomes obligated on the loan***.)

The TRID rules allow two methods of delivering the borrower's Closing Disclosure, namely:

1) *personal* delivery, i.e., handing it to the borrower in person;

OR

2) any other method, e.g., United States mail, fax, email, etc.

### "Received" by Borrower

***If the Borrower CD is delivered by any method other than personally, the lender generally must* add three more business days *for delivery, meaning that it must be sent not later than six business days prior to settlement***. For Closing Disclosure purposes, "business day" includes Saturdays, excluding only Sundays and ten federal public holidays, namely: New Year's Day, Martin Luther King Day, Washington's birthday, Memorial Day, July 4, Labor Day, Columbus Day, Veterans Day, Thanksgiving and Christmas.

In its TRID compliance guide for small entities, the CFPB advises the following as to "delivery" and "receipt" of the Borrowers' Closing Disclosure.

> 11.1: ...The creditor is responsible for ensuring that the consumer receives the Closing Disclosure form no later than three business days prior to consummation.
>
> 11.2: How must the Closing Disclosure be delivered?
> To ensure the consumer receives the Closing Disclosure on time, creditors must arrange for delivery as follows:
>
> • by providing it to the consumer in person.
> • by mailing, or other delivery methods, including email. Creditors may use electronic delivery methods subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act.
> • creditors must ensure that the consumer receives the Closing Disclosure at least three business days prior to consummation.
>
> 11.3: When is the Closing Disclosure considered to be received if it is delivered in person or if it is mailed?
> If the Closing Disclosure is provided *in person*, it is considered *received* by the consumer *on the day it is provided*. If it is *mailed or delivered electronically*, the consumer is considered to have received the Closing Disclosure *three business days after it is delivered or placed in the mail*. ***However*,** if the creditor has evidence that the consumer received the Closing Disclosure earlier than three business days after it is mailed or delivered, it may rely on that evidence and consider it to be received on that date.
>
> 11.4: Can a settlement agent provide the Closing Disclosure on the creditor's behalf?
> Yes. Creditors may contract with settlement agents to have the settlement agent provide the Closing Disclosure to consumers on the creditor's behalf.

> 11.7: This requirement imposes a three day waiting period, meaning that the loan may not be consummated less than three business days after the Closing Disclosure is received by the consumer [Borrower]. If a settlement is scheduled during the waiting period, the creditor generally must postpone the settlement....

In other words, the ***Borrower's CD must be delivered either three or six business days and received at least three business days prior to settlement to permit settlement to occur on that third or sixth business day.***

> *Example*: If the Borrower's CD is hand-delivered to the Borrower on Monday, what is the earliest possible date closing may occur?
>
> Answer: _____ (assuming no intervening federal holidays)

| Monday | Tuesday | Wednesday | Thursday |
|---|---|---|---|
| Delivery | Day 1 | Day 2 | Settlement (3rd Business Day) |

If the Borrower's CD is emailed or faxed or mailed to the Borrower, then under the rule, it would not be deemed "received" by the Borrower until three business days after it was sent/"delivered," thus requiring the CD to be sent a total of six business days prior to consummation to permit settlement on the sixth business day *unless* the lender has evidence that the Borrower actually received it earlier than three business days after it was sent. [See 11.3 above.]

> *Example:* The CFPB in its timeline example offers the following - a lender sends the Borrower's CD to the Borrower via overnight delivery on Friday and the Borrower receives and signs for the delivery on Saturday (thereby providing proof to the lender of earlier receipt). Rather than waiting until the following Friday to close (six business days after delivery), settlement may occur on or after Wednesday, the third business day after Borrower's actual receipt of the CD.

**Brokers: THESE DATES ARE NON-NEGOTIABLE.** While it is the lender's responsibility to comply with these requirements (not the broker's), it still is crucial that brokers educate their clients and customers about these disclosure timelines and prepare them for potential delays. Understand the following points as well:

1. The three/six business days prior to settlement so that settlement may occur on or after the third/sixth business day applies ***only to the Borrower's Closing Disclosure***, not the sellers' Closing Disclosure. *There is no rule requiring delivery of the seller's closing disclosure to the seller prior to the settlement meeting.*

2. Delivery must be to the **borrowers** personally, not to any broker acting as a buyer agent.

3. The lender, not the settlement agent, will decide whether to issue 1 or 2 separate Closing Disclosures and any other settlement statements authorizing disbursement of the proceeds.

4. If the lender decides to issue two separate Closing Disclosures, a broker acting as a dual agent should only give each party that party's CD, and not the other party's CD, as the lender chose to issue separate CDs for a reason.

### Corrected/Revised Closing Disclosure

The CFPB recognizes three categories of changes that require a corrected Closing Disclosure. They are:

1. changes that occur pre-consummation that require a new 3 business day period;
2. changes that occur pre-consummation that don't require a new 3 business day period;
3. changes that occur post-consummation.

As noted earlier in this section, according to the CFPB, the ***only three changes*** that will ***require*** a new Closing Disclosure and ***a new three business day waiting period*** are:

1. An increase in the APR;
2. A change in the loan product; or
3. The addition of a prepayment penalty.

As to other changes, the CFPB counsels in its small entity compliance guide:

> 12.3: 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.

## BROKER'S RESPONSIBILITY

Brokers' duties concerning the provision and accuracy of closing statements when they are not acting as the settlement agent are not substantially altered by the new forms. As mentioned, the Closing Disclosures will be prepared by the lender/creditor in-house or perhaps through an attorney-settlement agent, depending on the lender's practices.

**All brokers must review any Closing Disclosures presented to them, but you can't review what you're not given. Thus, if the emerging practice is that the listing agent and seller are only provided a copy of the seller's CD and the buyer agent and buyer are only given the Buyer's CD, then each broker will only be responsible for reviewing the CD for the party s/he represents. A broker's obligations regarding the settlement statement are the same, regardless of the type of settlement statement being used (BCD, SCD, HUD-1, builder form, commercial form, etc).**

The disciplinary statute [G.S. 93A-6(a)] establishes a broker's obligation concerning delivery of the closing statement. It states that a broker may be subject to disciplinary action for:

> (14) Failing, at the time a sales transaction is consummated, to deliver to the broker's client a detailed and accurate closing statement showing the receipt and disbursement of all monies relating to the transaction about which the broker knows or reasonably should know. <u>If a closing statement is prepared by an attorney or lawful settlement agent, a broker may rely on the delivery of that statement, *but the broker must review the statement for accuracy and notify all parties to the closing of any errors.*</u>

[Emphasis added.]

Thus, a broker's duty to provide a party with a copy of the settlement statement is satisfied if the broker assures that the closing attorney/settlement agent has provided a copy of the Closing Disclosure to the party.

## Broker Obligations

- A broker must confirm the accuracy of all ***entries about which s/he has direct knowledge***. Such items include, but may not be limited to:
  - the sale price;
  - amount of the due diligence fee and earnest money deposit;
  - amount of the brokerage commission and split;
  - any amounts due either party under the offer to purchase and contract, e.g., closing costs paid by seller, as well as any sums paid by or due to third parties related to the transaction, if the broker knows or should know about the expense.
- As to amounts paid by or due to third parties, brokers generally may assume that the amounts for charges and fees as stated on the settlement statement are correct *unless* there is something that would lead a reasonable broker to suspect that an amount is incorrect. As to all debits and credits related to the transaction, whether paid before or at closing, the broker must:
  1) review and confirm that all charges and credits have been properly debited or credited to the seller or buyer and are entered in the correct column;
     and
  2) review and confirm the accuracy of the calculations for all prorated items, escrow reserves, interim interest, excise tax and the "bottom line figures," i.e., total settlement charges to each party, cash from borrower-buyer, and cash to seller.
- If a broker is aware of *any expense* related to the transaction paid to or by either party or any third party that is not included on the settlement statement, the broker must notify both the settlement agent and the lender of the omission, as ***the settlement statement should reflect all expenses and payments related to the transaction***, not just monies the settlement agent disburses. Failure to notify the lender of any such expense or payment would be considered willful failure to disclose a material fact, e.g., not telling the lender that the buyer's friend loaned them money for closing costs, or that the builder-seller is giving the buyer a $200 gift card, or that the $450 paid to the home inspector prior to closing was paid by the borrower's parents. Understand, none of the foregoing acts is illegal ***so long as it is disclosed to and approved by the lender and*** it appears in the proper column on the settlement statement/Closing Disclosure. If the lender doesn't approve the payment, then the borrower/buyer can't accept it.

A broker should notify the settlement agent if the broker believes there are any errors or omissions on the disclosure statement.

## Potential Issues

1. **Delayed Closings.** The primary anticipated issue that may arise for brokers in connection with the new law and forms is *delayed closings due to lender/settlement agent's failure to ensure timely receipt by the Buyer/Borrower of the CD* at least three business days prior to settlement (personal delivery), or perhaps as many as six business days if

delivery is by any other means, subject to proof of earlier receipt. Brokers should prepare their clients for this possibility and the ramifications.

2. **Earlier Performance of Tasks.** The historical timeline for performing various tasks, such as title searches and gathering invoices and documenting expenses to be paid at closing, including taxes, insurance, seller's loan payoffs, repairs, owner association information, home warranty premium, etc., presumably will be accelerated. Lenders will need this information at least 2-3 weeks prior to settlement so they can prepare the buyer's CD and timely deliver it at least 3-6 days prior to consummation. Note too that *buyers may incur legal fees earlier in the process than at present* as attorneys most likely will need to perform a title search more than a week prior to settlement in order to assure the lender of clear title.

3. **Settlement Agent's Ability to Change Closing Disclosure.** Some major lenders have announced that they will prepare all lender required documents in-house and will not allow closing attorneys/settlement agents to make any changes on the closing disclosures. How they plan to handle last minute revisions that invariably arise at the closing remains to be seen. Some lenders have indicated an intent to funnel information/documents through a portal. To have access to the portal, one must pay a fee, which can be passed on by the closing attorney to the borrower/buyer.

   As far as the CFPB is concerned, "...creditors and settlement agents also may agree to divide responsibility with regard to completing the Closing Disclosure, with the settlement agent assuming responsibility to complete some or all the Closing Disclosure."

There are many resources available at the CFPB's website (see below) for those who want more information about the new TRID rules including:

- guides to and samples of proper completion of the Loan Estimate and new Closing Disclosures,
- videos,
- templates,
- timelines, and
- closing factsheets

See: www.consumerfinance.gov/regulatory-implementation/tila-respa/

Licensees who are members of a Realtor® organization will also find many resources available through the National Association of Realtors® website.

# FACT SITUATION FOR SAMPLE CLOSING DISCLOSURES

(Using 365 day calendar)
Settlement date = November 23

| | | |
|---|---|---|
| $249,650 | = | Sale price (no personal property) |
| $2,471 | = | Real property taxes– paid by seller before closing; prorate at closing. |
| $500 | = | Due Diligence Fee |
| $3,500 | = | Earnest Money Deposit |
| $138,425 | = | Seller's Loan payoff |
| $37.7534/day | = | Interim mortgage interest |
| $840 | = | Private Mortgage Insurance premium |
| $684 | = | Homeowner's Insurance premium |
| $85 | = | Deed preparation fee |
| $500 | = | Excise tax |
| $400 | = | Survey |
| $450 | = | Home Warranty - to be paid by Sellers at closing. |
| $30 | = | Courier fees - overnight to buyer's lender |
| $30 | - | Courier fees - payoff of sellers' lender |
| $650 | = | Attorney's Fee |
| $505.40 | = | Title Insurance - Lender policy |
| $64.60 | = | Title Insurance - Owner Policy |
| $82 | = | Recording fees: Warranty Deed = $26.00; Deed of Trust = $56.00 |

**Additional Facts**

| | | |
|---|---|---|
| Brokerage commission | = | 6% of sale price to be divided equally between agents. |
| Financing | = | $212,000 conventional 30 year loan with a fixed interest rate of 6.5%, .75% origination fee, $280 application fee & 1 loan discount point to be paid by borrower. |

Lender requires initial escrow reserves at closing equivalent to 4 months of taxes, and 2 months each of homeowner's insurance and mortgage insurance premiums.

**Expenses Paid By Borrower Before Closing**

| | | |
|---|---|---|
| Appraisal | = | $450 |
| Credit Report | = | $55 |
| Pest Inspection | = | $65 |
| Home Inspection | = | $325 |

Pages 2 and 3 of the Buyer's Closing Disclosure (BCD) on the next two pages are completed based on the foregoing numbers; pages 1, 4 and 5 have been omitted as they concern financial disclosures about loan terms and costs and will be completed either by the lender or the settlement agent based on information supplied by the lender. A completed Seller's Closing Disclosure (SCD) follows the BCD.

## Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

| | Loan Estimate | Final | Did this change? |
|---|---|---|---|
| Total Closing Costs (J) | | | |
| Closing Costs Paid Before Closing | | | |
| Closing Costs Financed (Paid from your Loan Amount) | | | |
| Down Payment/Funds from Borrower | | | |
| Deposit | | | |
| Funds for Borrower | | | |
| Seller Credits | | | |
| Adjustments and Other Credits | | | |
| **Cash to Close** | | | |

## Summaries of Transactions

Use this table to see a summary of your transaction.

### BORROWER'S TRANSACTION

| | |
|---|---|
| **K. Due from Borrower at Closing** | 258,532.97 |
| Sale Price of Property | 249,650.00 |
| Sale Price of Any Personal Property Included in Sale | 0 |
| Closing Costs Paid at Closing (J) | 8625.71 |
| **Adjustments** | |
| **Adjustments for Items Paid by Seller in Advance** | |
| City/Town Taxes 11/24 to 12/31/15 | 257.26 |
| County Taxes to | |
| Assessments to | |
| **L. Paid Already by or on Behalf of Borrower at Closing** | 216,000.00 |
| Deposit | 3500.00 |
| Loan Amount | 212,000.00 |
| Existing Loan(s) Assumed or Taken Subject to | |
| Seller Credit | |
| **Other Credits** | |
| Due Diligence Fee | 500.00 |
| **Adjustments** | |
| **Adjustments for Items Unpaid by Seller** | |
| City/Town Taxes to | |
| County Taxes to | |
| Assessments to | |

### CALCULATION

| | |
|---|---|
| Total Due from Borrower at Closing (K) | 258,532.97 |
| Total Paid Already by or on Behalf of Borrower at Closing (L) | 216,000.00 |
| **Cash to Close ☒ From ☐ To Borrower** | 42,532.97 |

### SELLER'S TRANSACTION

| | |
|---|---|
| **M. Due to Seller at Closing** | 249,907.26 |
| Sale Price of Property | 249,650.00 |
| Sale Price of Any Personal Property Included in Sale | 0 |
| **Adjustments for Items Paid by Seller in Advance** | |
| City/Town Taxes to 12/31/15 | 257.26 |
| County Taxes to | |
| Assessments to | |
| **N. Due from Seller at Closing** | 154,969.00 |
| Excess Deposit | 16,044.00 |
| Closing Costs Paid at Closing (J) | |
| Existing Loan(s) Assumed or Taken Subject to | |
| Payoff of First Mortgage Loan | 138,425.00 |
| Payoff of Second Mortgage Loan | |
| Due Diligence Fee | 500.00 |
| Seller Credit | |
| **Adjustments for Items Unpaid by Seller** | |
| City/Town Taxes to | |
| County Taxes to | |
| Assessments to | |

### CALCULATION

| | |
|---|---|
| Total Due to Seller at Closing (M) | 249,907.26 |
| Total Due from Seller at Closing (N) | 154,969.00 |
| **Cash ☐ From ☒ To Seller** | 94,938.26 |

## Closing Cost Details

| Loan Costs | Borrower-Paid At Closing | Borrower-Paid Before Closing | Seller-Paid At Closing | Seller-Paid Before Closing | Paid by Others |
|---|---|---|---|---|---|
| **A. Origination Charges** | $3,990.00 | | | | |
| 01 0.75% of Loan Amount (Points) | 1590.00 | | | | |
| 02 1 loan discount point | 2120.00 | | | | |
| 03 Application fee | 280.00 | | | | |
| 04 | | | | | |
| 05 | | | | | |
| 06 | | | | | |
| 07 | | | | | |
| 08 | | | | | |
| **B. Services Borrower Did Not Shop For** | $505.00 | | | | |
| 01 Appraisal Fee - Value Appraisals | | 450.00 | | | |
| 02 Credit Report | | 55.00 | | | |
| 03 | | | | | |
| 04 | | | | | |
| 05 | | | | | |
| 06 | | | | | |
| 07 | | | | | |
| 08 | | | | | |
| 09 | | | | | |
| 10 | | | | | |
| **C. Services Borrower Did Shop For** | $1220.40 | | $85.00 | | |
| 01 Pest Inspection - Grub Busters Inc | | 65.00 | | | |
| 02 Attorney Fee | 650.00 | | | | |
| 03 Title Insurance - lender policy Tarheel Title, LLC | 505.40 | | | | |
| 04 Deed preparation | | | 85.00 | | |
| 05 | | | | | |
| 06 | | | | | |
| 07 | | | | | |
| 08 | | | | | |
| **D. TOTAL LOAN COSTS (Borrower-Paid)** | $5715.40 | | | | |
| Loan Costs Subtotals (A + B + C) | 5145.40 | 570.00 | 85.00 | | |

| Other Costs | Borrower-Paid At Closing | Borrower-Paid Before Closing | Seller-Paid At Closing | Seller-Paid Before Closing | Paid by Others |
|---|---|---|---|---|---|
| **E. Taxes and Other Government Fees** | $82.00 | | $500.00 | | |
| 01 Recording Fees Deed: $26.00 Mortgage: $56.00 | 82.00 | | | | |
| 02 Excise Tax | | | 500.00 | | |
| **F. Prepaids** | $1826.03 | | | | |
| 01 Homeowner's Insurance Premium ( mo.) 1 year | 684.00 | | | | |
| 02 Mortgage Insurance Premium ( mo.) 1 year | 840.00 | | | | |
| 03 Prepaid Interest (37.7534 per day from 11/23 to 11/30 ) | 302.03 | | | | |
| 04 Property Taxes ( mo.) | | | | | |
| 05 | | | | | |
| **G. Initial Escrow Payment at Closing** | $1077.68 | | | | |
| 01 Homeowner's Insurance $57 per month for 2 mo. | 114.00 | | | | |
| 02 Mortgage Insurance $70 per month for 2 mo. | 140.00 | | | | |
| 03 Property Taxes 205.92 per month for 4 mo. | 823.68 | | | | |
| 04 | | | | | |
| 05 | | | | | |
| 06 | | | | | |
| 07 | | | | | |
| 08 Aggregate Adjustment | | | | | |
| **H. Other** | $819.60 | | | | |
| 01 Home Inspection - A-1 Home Inspections | | 325.00 | | | |
| 02 Survey - Line Experts Inc | 400.00 | | | | |
| 03 Home Warranty Premium | | | 450.00 | | |
| 04 Owner's title insurance premium | 64.60 | | | | |
| 05 Brokerage Fee - ABC Realty | | | 7489.50 | | |
| 06 Brokerage Fee - XYZ Realty | | | 7489.50 | | |
| 07 Courier Fees - overnight to Buyers' Lender | 30.00 | | | | |
| 08 Courier Fees - payoff to Seller's lender | | | 30.00 | | |
| **I. TOTAL OTHER COSTS (Borrower-Paid)** | $3805.31 | | | | |
| Other Costs Subtotals (E + F + G + H) | 3480.31 | 325.00 | | | |

| | | | | |
|---|---|---|---|---|
| **J. TOTAL CLOSING COSTS (Borrower-Paid)** | $9520.71 | | | |
| Closing Costs Subtotals (D + I) | 8625.71 | 895.00 | $16,044.00 | |
| Lender Credits | | | | |

Seller

# Closing Disclosure

## Closing Information

**Date Issued**
**Closing Date** Nov 23, 2015
**Disbursement Date**
**Settlement Agent**
**File #**
**Property**

**Sale Price**
$249,650.00

## Transaction Information

**Borrower**

**Seller**

## Summaries of Transactions

| SELLER'S TRANSACTION | | | |
|---|---|---|---|
| **Due to Seller at Closing** | | | 249,907.26 |
| 01 Sale Price of Property | | | 249,650.00 |
| 02 Sale Price of Any Personal Property Included in Sale | | | |
| 03 | | | |
| 04 | | | |
| 05 | | | |
| 06 | | | |
| 07 | | | |
| 08 | | | |
| **Adjustments for Items Paid by Seller in Advance** | | | |
| 09 City/Town Taxes | 11/24 to | 12/31 | 257.26 |
| 10 County Taxes | to | | |
| 11 Assessments | to | | |
| 12 | | | |
| 13 | | | |
| 14 | | | |
| 15 | | | |
| 16 | | | |
| **Due from Seller at Closing** | | | 154,969.00 |
| 01 Excess Deposit | | | |
| 02 Closing Costs Paid at Closing (J) | | | 16,044.00 |
| 03 Existing Loan(s) Assumed or Taken Subject to | | | |
| 04 Payoff of First Mortgage Loan | | | 138,425.00 |
| 05 Payoff of Second Mortgage Loan | | | |
| 06 Due Diligence Fee | | | 500.00 |
| 07 | | | |
| 08 Seller Credit | | | |
| 09 | | | |
| 10 | | | |
| 11 | | | |
| 12 | | | |
| 13 | | | |
| **Adjustments for Items Unpaid by Seller** | | | |
| 14 City/Town Taxes | to | | |
| 15 County Taxes | to | | |
| 16 Assessments | to | | |
| 17 | | | |
| 18 | | | |
| 19 | | | |

| CALCULATION | |
|---|---|
| Total Due to Seller at Closing | 249907.26 |
| Total Due from Seller at Closing | 154969.00 |
| **Cash ☐ From ■ To Seller** | 94,938.26 |

## Contact Information

| REAL ESTATE BROKER (B) | |
|---|---|
| **Name** | ABC Realty |
| **Address** | 502 Main St, Anytown, NC |
| **__ License ID** | |
| **Contact** | |
| **Contact __ License ID** | |
| **Email** | |
| **Phone** | |

| REAL ESTATE BROKER (S) | |
|---|---|
| **Name** | XYZ Realty |
| **Address** | 609 S. Fourth St Anytown, NC |
| **__ License ID** | |
| **Contact** | |
| **Contact __ License ID** | |
| **Email** | |
| **Phone** | |

| SETTLEMENT AGENT | |
|---|---|
| **Name** | |
| **Address** | |
| **__ License ID** | |
| **Contact** | |
| **Contact __ License ID** | |
| **Email** | |
| **Phone** | |

**Questions?** If you have questions about the loan terms or costs on this form, use the contact information above. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

Seller

# Closing Cost Details

| Loan Costs | Seller-Paid At Closing | Seller-Paid Before Closing |
|---|---|---|
| **A. Origination Charges** | | |
| 01 % of Loan Amount (Points) | | |
| 02 | | |
| 03 | | |
| 04 | | |
| 05 | | |
| 06 | | |
| 07 | | |
| 08 | | |
| **B. Services Borrower Did Not Shop For** | | |
| 01 | | |
| 02 | | |
| 03 | | |
| 04 | | |
| 05 | | |
| 06 | | |
| 07 | | |
| 08 | | |
| **C. Services Borrower Did Shop For** | | |
| 01 | | |
| 02 | | |
| 03 | | |
| 04 | | |
| 05 | | |
| 06 | | |
| 07 | | |
| 08 | | |

| Other Costs | | |
|---|---|---|
| **E. Taxes and Other Government Fees** | | |
| 01 Recording Fees Deed: Mortgage: | | |
| 02 Excise Tax | 500.00 | |
| **F. Prepaids** | | |
| 01 Homeowner's Insurance Premium ( mo.) | | |
| 02 Mortgage Insurance Premium ( mo.) | | |
| 03 Prepaid Interest ( per day from to ) | | |
| 04 Property Taxes ( mo.) | | |
| 05 | | |
| **G. Initial Escrow Payment at Closing** | | |
| 01 Homeowner's Insurance per month for mo. | | |
| 02 Mortgage Insurance per month for mo. | | |
| 03 Property Taxes per month for mo. | | |
| 04 | | |
| 05 | | |
| 06 | | |
| 07 | | |
| 08 Aggregate Adjustment | | |
| **H. Other** | | |
| 01 Home Warranty premium | 450.00 | |
| 02 Warranty Deed | 85.00 | |
| 03 Brokerage commissions - ABC Realty | 7489.50 | |
| 04 Brokerage commission - XYZ Realty | 7489.50 | |
| 05 Courier fees - loan payoff | 30.00 | |
| 06 | | |
| 07 | | |
| 08 | | |
| 09 | | |
| 10 | | |
| 11 | | |
| 12 | | |
| 13 | | |

| | | |
|---|---|---|
| **J. TOTAL CLOSING COSTS** | 16,044.00 | |