TRID: Changed Circumstances & Revised Disclosures

November 14, 2018

Turning Regulations into PLAIN ENGLISH!
Table of Contents

I. “Good Faith” Tolerances .................................................................................................................. 1

II. Revising the Loan Estimate ........................................................................................................... 4

   The “Good Faith” Effect* on Revised Loan Estimates ................................................................. 5

III. Revising the Closing Disclosure ................................................................................................ 10

* Words in Italics are taken directly from the applicable regulations.
I. “Good Faith” Tolerances:

The Loan Estimate ...must be provided in good faith. ...if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. The “reasonably available” standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. [Commentary to §1026.19(e)(1)(i) #1]

Generally, an estimated closing cost will be considered to be “in good faith” if the actual final amount paid (unrounded) by the consumer on final Closing Disclosure does not exceed the amount (unrounded) indicated on the final (i.e., due to changed circumstances) Loan Estimate Disclosure (i.e., zero tolerance). [§1026.19(e)(3) and Commentary to §1026.19(e)(3)]

A. Zero Tolerance:

Unless otherwise specified the following fees (not necessarily all inclusive) cannot increase:

1. Lender or Broker Fees

2. Lender or Broker Credits

3. Investor Fees

4. Affiliate (Lender or Broker) Fees:
   Any fee paid to another who is owned, controlled or can be voted upon in a capacity meeting or exceeding 25% (also includes a controlling interest in the election of directors).

5. Transfer Taxes

6. Third Party Service Provider Fees (Lender or Broker Required)
   Where the consumer is not allowed to shop for a provider. For example (illustrative only):
   
   a. Credit Report
   b. Flood Determination
   c. Appraisal
   d. Title Services
B. 10% Tolerance: [§1026.19(e)(3)(ii)]

The cumulative total of actual fees for applicable third-party services required by the bank and government recording fees disclosed on the Closing Disclosure cannot exceed the corresponding Loan Estimate Disclosure cumulative total by more than 10%. Included are:

1. Unaffiliated Third Party Service Provider Fees (Lender or Broker Required):

   The applicant is allowed to shop for the provider of a third party service required by the bank. Whether or not the applicant was allowed to “shop” in relation to the determination of the cumulative 10% tolerance is based upon all relevant facts and circumstances. For example:

   a. Shopping List:

      Non-compliance with TRID shopping list requirements* is not an absolute determining factor. For example if you forgot to provide the shopping list or failed to provide a provider on the shopping list. If you can demonstrate that the applicant was allowed to shop, the fee related to that service could be included within the cumulative 10% tolerance. [Commentary to §1026.19(e)(3)(iii) #2]

   b. Loan Estimate:

      Non-compliance with TRID Loan Estimate section C disclosure requirements* is not an absolute determining factor. For example, if a service was omitted from section C of the Loan Estimate but changed at consummation. If you can demonstrate that the applicant was allowed to shop, the fee related to that service could be included within the cumulative 10% tolerance. [Commentary to §1026.19(e)(3)(ii) #2]

   *Note: However, non-compliance as noted above is still a violation with respect to the Shopping List and or Loan Estimate requirements.

2. Government Recording Fees
C. Unlimited Tolerance: [§1026.19(e)(3)(iii)]

Some charges may exceed the amounts disclosed (even if paid to an affiliate) on the Loan Estimate if the estimate was based upon the best information available to the creditor at the time it was disclosed. Those charges include:

1. Prepaid (Odd Days) Interest

2. Property Insurance Premiums:
   All property insurance premiums (i.e., hazard, flood, etc.), required or not, are subject to an unlimited tolerance. However, the lender does not comply with the “good faith” requirement if property insurance is required but not disclosed.
   
The rule provides that property insurance premiums are included in the category of settlement charges not subject to a tolerance, whether or not the insurance provider is a lender affiliate. [Federal Register 12/31/13 page 79829]

3. Escrow Deposit

4. Third-Party Service Provider Fees (Lender or Broker Required):
   If the consumer was allowed to shop and selected a provider not included on the shopping list.

5. Voluntary Third-Party Services:
   Charges for third-party services not required by the lender. However, it’s not absolute. For example, if the consumer informs the creditor that the consumer will obtain a type of inspection not required by the creditor, the creditor must include the charge for that item in the disclosures provided... but the actual amount of the inspection fee need not be compared to the original estimate for the inspection fee to perform the good faith analysis... [Commentary to §1026.19(e)(3)(iii) #3]

   But,...if the subject property is located in a jurisdiction where consumers are customarily represented at closing by their own attorney, even though it is not a requirement, and the creditor fails to include a fee for the consumer’s attorney, or includes an unreasonably low estimate for such fee, on the original estimates provided... then the creditor’s failure to disclose, or unreasonably low estimation, does not comply... [Commentary to §1026.19(e)(3)(iii) #3]

6. Property Taxes:
   Additionally,...if the creditor fails to include a charge for property taxes, or includes an unreasonably low estimate for that charge, on the original estimates provided...then the creditor’s failure to disclose, or unreasonably low estimation, does not comply... [Commentary to §1026.19(e)(3)(iii) #3]

D. Service Not Utilized:
   If the estimated fee for a service was included on the Loan Estimate Disclosure but ultimately the service was not used, the estimated fee for that service cannot be included within the tolerance calculations. [Commentary to §1026.19(e)(3)(ii) #5]
II. Revising the Loan Estimate:

A. Tolerance Reset Loan Estimate Re-Disclosure:

A revised Loan Estimate (for comparison/tolerance purposes) may only be provided in connection with a valid changed circumstance. [§1026.19(e)(3)(iv) and Commentary to §1026.19(e)(3)(iv)]

B. Information Only Loan Estimate Re-disclosure:

A lender may issue a revised Loan Estimate Disclosure …for informational purposes, e.g., to keep the consumer apprised of updated information, even if the revised disclosures may not be used for purposes of determining good faith… For example a lender could issue …revised disclosures even though the sum of all costs subject to the 10 percent tolerance category has not increased by more than 10 percent. However, the revised disclosure cannot be used to determine either the 0% or 10% tolerances. [Commentary to §1026.19(e)(3)(iv) #4]

C. Revised Loan Estimates and the “Good Faith” Requirement:

Any revised disclosure (to reset tolerances and/or for informational purposes) issued …must be based on the best information reasonably available to the creditor at the time they are provided to the consumer… For example, if the creditor issues revised disclosures reflecting a new rate lock extension fee… other charges unrelated to the rate lock extension must be reflected on the revised disclosures based on the best information reasonably available to the creditor at the time the revised disclosures are provided. Nonetheless, any increases in those other charges unrelated to the rate lock extension (the legitimate changed circumstance) may not be used… to determine either the 0% or 10% tolerances. [Commentary to §1026.19(e)(3)(iv) #5]

D. Intent to Proceed Date:

Once the consumer indicates an intent to proceed within the time specified by the creditor… the date and time at which estimated closing costs expire are left blank on any subsequent revised disclosures. [Commentary to §1026.37(a)(13) #4]
# The “Good Faith” Effect* on Revised Loan Estimates

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 5th</td>
<td>Original Loan Estimate</td>
<td>A purchase agreement is received indicating new information; however, it does not impact any tolerance-related charges. The lender is not required to provide a revised LE at this point.</td>
</tr>
<tr>
<td>January 8th</td>
<td>Purchase Agreement</td>
<td>The original Loan Estimate was delivered. The $500 appraisal charge was not disclosed.</td>
</tr>
<tr>
<td>January 14th</td>
<td>Revised LE #1</td>
<td>The borrower requests an increase in the loan amount affecting the bank’s 1% origination fee.</td>
</tr>
<tr>
<td>January 18th</td>
<td>Title Insurance Bill</td>
<td>The title insurance bill is received. The actual cost of the owner's and lender's title insurance is known.</td>
</tr>
<tr>
<td>January 22nd</td>
<td>Revised LE #2</td>
<td>The appraisal is received. There is a repair that must be completed before the appraiser will sign off on the final appraisal. The appraiser will also charge a $100 inspection fee to verify the repair has been completed.</td>
</tr>
<tr>
<td>January 31st</td>
<td>Closing Disclosure</td>
<td>The Closing Disclosure is ready.</td>
</tr>
</tbody>
</table>

The original Loan Estimate was delivered. The $500 appraisal charge was not disclosed.

The borrower requests an increase in the loan amount affecting the bank’s 1% origination fee:
- Loan Amount: $100,000 to $125,000
- 1% Fee: $1,000 to $1,250

A revised LE to adjust the loan amount and origination fee must be provided within 3 business days of the request in order to capture the $250 origination fee increase.

Effective 10/1/18: Any revised LE must be completed based on the best information available at the time disclosure is provided (i.e., "Good Faith Standard"). So, in addition to revising the information related to the changed circumstance (loan amount and origination fee) the lender is required to update anything new or inaccurate. This includes anything related to the purchase agreement received January 8th and must include the $500 appraisal change that was not disclosed on the original LE.

The appraisal is received. There is a repair that must be completed before the appraiser will sign off on the final appraisal. The appraiser will also charge a $100 inspection fee to verify the repair has been completed.

A revised LE adding the inspection fee must be provided within 3 business days of receiving the appraisal in order to capture the $100 inspection fee.

Effective 10/1/18: Any revised LE must be completed based on the best information available at the time disclosure is provided (i.e., "Good Faith Standard"). So, in addition to revising the information related to the changed circumstance (inspection fee), the lender is required to update anything that is new or inaccurate in relation to the the previous LE (Revised LE #1). In this example, the actual cost of the owner’s and lender’s title insurance is now known and therefore must be updated.

---

* TRID Update Final Rule

Banker's Compliance Consulting
www.bankerscompliance.com
consultants@bankerscompliance.com

Version 1.0
E. Changed Circumstances:

   a. War
   b. Natural Disaster

   a. Income Verification
   b. Employment Verification

   a. Unknown Appraisal Issues
   b. Unknown Property Boundary Issues
   c. Pest Inspection Issues

   a. Creditworthiness
   b. Collateral Value

5. Applicant Requested Change: [§1026.19(e)(3)(iv)(C)]
   a. Amortization Schedule
   b. Fixed vs. Variable Rate Feature
   c. Power of Attorney Added
TRID


The consumer does not indicate an intent to proceed with the transaction within ten business days or longer (as indicated by the lender) after the Loan Estimate Disclosure was provided. No other justification is necessary. [Commentary to §1026.19(e)(3)(iv)(E) #1]

7. Interest Rate Dependent Charges (Rate Lock Event): [§1026.19(e)(3)(iv)(D)]

If the interest rate was not locked when the Loan Estimate Disclosure was provided a revised version MUST be provided when the interest rate is subsequently locked. This is required even if the interest rate dependent charges do not change as a result of the lock.

8. Delayed Settlement Date on a New Construction Loan: [§1026.19(e)(3)(iv)(F)]

In transactions involving new construction (under or yet to be constructed NOT a remodel or home improvement project), where the creditor reasonably expects that settlement will occur more than 60 days after... the Loan Estimate is provided. ...the creditor may provide revised disclosures to the consumer if the original disclosures... state clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided...

A home is not under construction if a use and/or occupancy permit was issued prior to delivery of the Loan Estimate Disclosure.

F. Changed Circumstances(s) Total ≤ 10% Cumulative Sum Tolerance:

If a valid changed circumstance occurs but does not cause the cumulative sum of all 10% tolerance charges to exceed the 10% threshold, a revised Loan Estimate Disclosure is not permitted. For example:

An unreleased lien is discovered and the title company must perform additional work to release the lien. However, the additional costs amount to only a five percent increase over the sum of all fees included in the category of fees, which may not increase by more than 10 percent. A changed circumstance has occurred (i.e., new information), but the sum of all costs subject to the 10 percent tolerance category has not increased by more than 10 percent. ...the actual title fees of $500 may not be compared to the revised title fees of $500; they must be compared to the originally estimated title fees of $400 because the changed circumstance did not cause the sum of all costs subject to the 10 percent tolerance category to increase by more than 10 percent. [Commentary to §1026.19(e)(3)(iv)(A) #1(ii)]
TRID

G.  Delivery [§1026.19(e)(4)(ii)] and Timing: [§1026.19(e)(4)(i)]

A revised Loan Estimate Disclosure CANNOT be provided (in person or by mail) at the same time as or after the Closing Disclosure is provided.

1. General:

Generally, a revised Loan Estimate Disclosure must be provided within three business days (general) of receiving information sufficient to establish a valid changed circumstance. For example, if information sufficient to establish a valid changed circumstance is received on Monday, a revised Loan Estimate Disclosure must be provided (in person or by mail) by Thursday.

2. Cumulative 10% Tolerance Overage Date:

However, if there are multiple changed circumstances that occur but do not individually exceed the 10% tolerance, a revised Loan Estimate disclosure cannot be provided (in person or by mail) until receipt of the changed circumstance causing the cumulative sum of all 10% tolerance charges to exceed 10%. The revised disclosure must be provided within three business days (general) of that event.

For example, a creditor receives information on Monday that, because of a changed circumstance... the title fees will increase by an amount totaling six percent of the originally estimated settlement charges... The creditor had received information three weeks before that, because of a changed circumstance... the pest inspection fees increased by an amount totaling five percent of the originally estimated settlement charges... Thus, on Monday, the creditor has received sufficient information to establish a valid reason for revision and must provide revised disclosures reflecting the 11 percent increase by Thursday to comply... [Commentary to §1026.19(e)(4)(i) #1(ii)]

3. Rate Lock Event:

No later than three business days (general) after the date the interest rate is locked, the creditor shall provide a revised version of the disclosures... [Commentary to §1026.19(e)(3)(iv)(D)]
TRID

H. Receipt: [§1026.19(e)(4)(ii)]

The consumer must receive a revised version of the disclosures... not later than four business days (precise) prior to consummation.

1. In Person = Now

2. Mail:

If the revised version of the disclosures... is not provided to the consumer in person, the consumer is considered to have received such version three business days (precise) after the creditor delivers or places such version in the mail.

I. Documentation: [Commentary to §1026.19(e)(3)(iv) #3]

If a revised Loan Estimate Disclosure is provided due to a changed circumstance the reason for the revision must be documented. Documentation must include the original estimated cost, reason for the revision; how the revision affected the cost(s) and that the timing requirements were met.
III. Revising the Closing Disclosure: [§1026.19(f)(2)]

A. Inaccurate Closing Disclosure:

If a Closing Disclosure (already provided) becomes ...inaccurate before consummation, the creditor shall (must) provide corrected disclosures reflecting any changed terms to the consumer... [§1026.19(f)(2)(i)]

Identification of New Information & / or a Change

"Actual Terms"

Closing Disclosure

"In Hand"
No Later Than 3 Days Before Loan Closing

"In Hand"
At or Before*
Loan Closing

Revised Closing Disclosure

REVISED
B. Closing Disclosure Accuracy:

The **lender must exercise due diligence** in providing the consumer with a **Closing Disclosure that reflects the “actual terms” of the transaction based on the best information reasonably available**. [§1026.19(f)(1)(i) and Commentary to 1026.19(f)(1)(i) #2]

1. Best Information Reasonably Available – Due Diligence Expectation:

   ...the creditor must at a minimum utilize generally accepted calculation tools... The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to the consumer for the time of consummation, to insurance companies for the cost of insurance, to realtors for taxes and escrow fees, or to a settlement agent for homeowner's association dues or other information in connection with a real estate settlement. [Commentary to §1026.19(f)(1)(i) #2(i)]

2. Actual Terms Unknown:

   If an actual term is unknown, **the creditor may utilize estimates using the best information reasonably available in making disclosures even though the creditor knows that more precise information will be available at or before consummation. However, the creditor may not utilize an estimate without exercising due diligence to obtain the actual term for the consumer's transaction.** [Commentary to §1026.19(f)(1)(i) #2 (ii)]

C. Caution! Delivering Closing Disclosures Too Early:

   ...the Bureau believes that... the TRID ...rules should prevent creditors from sending Closing Disclosures very early in the process before engaging in due diligence to ensure that any costs that are not finalized are estimated in good faith. [Federal Register 5/2/18 – Page 19169]
D. Resetting Tolerances With a Closing Disclosure (i.e. Valid Changed Circumstance):

Creditors may provide consumers with a revised Closing Disclosure reflecting any charges resulting from a valid changed circumstance and rely on those figures (rather than the amounts disclosed on the Loan Estimate) for purposes of determining “good faith” and the applicable tolerance. Any revised disclosure must be provided within three business days (general) of the valid changed circumstance. [§1026.19(e)(4)]
E. Review: [§1026.19(f)(2)(i)]

The borrower must be allowed to review the (revised) Closing Disclosure on the business day (general) before consummation. The Closing Disclosure should be completed based upon those items that are known to the creditor at that time.

F. Receipt: [§1026.19(f)(2)(i)]

If the Closing Disclosure becomes inaccurate prior to consummation a revised Closing Disclosure must be received by the borrower at or before consummation.

G. Three-Day Waiting Period: [§1026.19(f)(2)(ii)]

Any of the following changes will require a revised Closing Disclosure to be received by the borrower not less than three business days (precise) prior to consummation:

1. Loan Product Change (i.e., Fixed Rate vs. Adjustable Rate Product or 3/1 ARM vs. 5/1 ARM) [§1026.38(a)(5)(iii)]

2. Inaccurate APR: [§1026.22 & §1026.38(o)(4)]

   a. Regular Transactions – More than 0.125% above or below disclosed APR.

   b. Irregular Transactions – More than 0.25% above or below the disclosed APR:

      i. Multiple Advance (construction loans).

      ii. Irregular Payment Schedules (to accommodate seasonal incomes).

      iii. Irregular Payment Amounts.

3. Prepayment Penalty Added [§1026.37(b)(4) & §1026.38(b)]
H. Post-Consummation Revisions: [§1026.19(f)(2)(iii)]

A revised Closing Disclosure must be provided to the borrower in the event of a change that causes the Closing Disclosure to become inaccurate (amount actually paid by the borrower vs. amount disclosed).

1. Revision Timeframe:
   Changes that occur within 30 days after consummation.

2. Revised Disclosure Timing:
   ...the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.

I. Non-Numeric Clerical Errors: [§1026.19(f)(2)(iv)]

Non-numeric clerical errors may be corrected by delivering or mailing a revised Closing Disclosure no later than 60 days after consummation. Clerical errors are those that do not affect any numerical disclosure (i.e. amount of any fee) or delivery of the Loan Estimate or Closing Disclosure (i.e., mailing address).

J. Per Diem Interest Changes Post Consummation:

A creditor is not required to provide corrected disclosures... if the only changes that would be required to be disclosed in the corrected disclosure are changes to per-diem interest and any disclosures affected by the change in per-diem interest, even if the amount of per-diem interest actually paid by the consumer differs from the amount disclosed... [Commentary to §1026.19(f)(2)(iii) #2]

Nonetheless, if a creditor is providing a corrected disclosure... for reasons other than changes in per-diem interest and the per-diem interest has changed as well, the creditor must disclose... the correct amount of the per-diem interest and provide corrected disclosures for any disclosures that are affected by the change in per-diem interest. [Commentary to §1026.19(f)(2)(iii) #2]