

CFPB'S NEW CLOSING DISCLOSURE FORM

An Abundance of Questions and Concerns with Few Answers

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There are a lot of questions surrounding the implementation of the new Closing Disclosure form. Although some are calling the Closing Disclosure form 'the new HUD-1' it is a far more complex document than the current HUD-1. It not only incorporates information from the Good Faith Estimate, Truth in Lending Statement and settlement costs, it also changes how settlement will occur, leaving lots of unanswered questions. The most certain fact the real estate industry knows is that the form will be effective on all loans originated on or after August 1, 2015. As you can see, we have some time to figure out how this will all work.

The Closing Disclosure form is the TILA-RESPA Integrated form created by the Consumer Financial Protection Bureau (CFPB). It is the functional equivalent of combining the Truth in Lending Disclosure form and the HUD-1 Settlement form (as it also serves as a comparison to the Good Faith Estimate) showing loan details as well as settlement costs. Basically, it replaces the current HUD-1 Settlement form, and, if you're involved in the sale of residential real estate, this change will impact you in some form or fashion.

The Closing Disclosure form is intended to further the CFPB's "Know Before You Owe" campaign. It is designed to eliminate the surprises at the closing table by requiring the Closing Disclosure form to be provided to borrowers three business days before closing. CFPB designed the three business day rule so that consumers will review their final loan terms and costs in an unpressured

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environment rather than at the closing table where people may feel rushed. This in turn allows consumers time to confirm whether they are getting what they expected. The three business day rule is a laudable improvement to the current practice of lender figures arriving at the settlement

agent the day of closing, but there are questions about how it will work in practice.

The three day rule requires that the lender provide the Closing Disclosure form to the borrower three days before closing. To ensure that the borrower receives the Closing Disclosure form on time, the lender must arrange delivery as follows:

- By providing it to the borrower in person, or
 - By mailing or by other delivery methods including email.
- NOTE: a lender may use electronic delivery methods subject to compliance with the borrower's consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.).

If the Closing Disclosure form is provided in person it is considered received on the day it is provided; however, if the Closing Disclosure form is mailed or delivered electronically, the borrower is considered to have received it three business days after it is delivered or placed in the mail. This means for compliance purposes the Closing Disclosure form may have to be ready six business days before closing.

If the lender fails to meet this deadline the closing must be postponed as there is no waiver mechanism for the borrower to waive the three business day rule.

Furthermore, it is unclear what practices and procedures the lender will put into place in order to comply with the three business day rule and what evidence the lender will require in order to prove the borrower's receipt of the Closing Disclosure form. The CFPB does not provide any guidance in their rule concerning best practices or sufficient evidentiary standards of compliance.

Now, the next question; will the lender prepare the Closing Disclosure form, or will the settlement agent, or a combination of the two?

Short answer is yes, yes, and yes. Yes, the lender in some circumstances will prepare the entire Closing Disclosure form. In other cases, yes, the settlement agent will gather the lender's information and prepare it. And still in other cases, yes, there will be a combination of the lender preparing its portion and the settlement agent preparing theirs.

Lenders are already trying to figure out the new landscape of the closing process. For instance, Wells Fargo has announced that it will prepare the Closing Disclosure form and deliver it to the borrower. The main motivation for Wells Fargo in doing this appears to be that it can control the delivery process and obtain and maintain evidence of receipt of the Closing Disclosure form by the borrower three business days prior to closing. Still, other lenders may allow the settlement agent to handle delivery of the Closing Disclosure form to the borrower and require various methods of proof of receipt.

In the end, the future is uncertain about many of the practical aspects of the implementation of the Closing Disclosure form. Some of the questions will be answered before August 1, 2015, others will be worked out in an iterative process as the Closing Disclosure form rolls out and lenders, settlement agents, real estate brokers and other real estate professionals work together to maintain a seamless and efficient real estate conveyance system.

To see what the Closing Disclosure form looks like please visit the Consumer Financial Protection Bureau's website at <http://www.consumerfinance.gov/knowbeforeyouowe/compare/>. This page provides you a comparison of the current forms as well as the ability to download the Closing Disclosure form as a PDF.