



August 3, 2017
TRID FAQ #20

Q: The initial Closing Disclosure was issued to the borrower this morning, then another CD was issued to the borrower in the afternoon. Can the borrower only receive the 2nd CD in order to start the 3-day waiting period?

A: No, the borrower must receive the *initial* CD in order to start the waiting period. It is the *initial* CD that starts the waiting period – any CD delivered after the initial CD is a revised CD.

Details: § 1026.19(f)(1)(ii)(A) provides the general timing requirements for delivery of CDs, and it makes clear that the borrower must receive the initial CD (or revised CD that requires a new waiting period under § 1026.19(f)(2)(ii)) no later than 3 business days before consummation. The 3 business day waiting period begins when the initial CD is received, even if such initial CD is received *after* the receipt of a revised CD.

- 1026.19(f)(1)(ii)(A): “Except as provided in paragraphs (f)(1)(ii)(B) [timeshares], (f)(2)(i) [revised pre-consummation CD with no waiting period], (f)(2)(iii), (f)(2)(iv), and (f)(2)(v) [all post-consummation events] of this section [relating to CDs], the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section [CDs] no later than three business days before consummation.”
- Comment 1026.19(f)(1)(ii)-2: “Section 1026.19(f)(1)(ii)(A) [timing] provides that the consumer must receive the disclosures no later than three business days before consummation. To comply with this requirement, the creditor must arrange for delivery accordingly.”

Example: If the lender delivers 2 CDs on Monday, and the lender only has evidence that the consumer received the 2nd, revised CD, and not the 1st, initial CD, the "mailbox" rule (i.e. that the consumer is considered to receive the disclosure 3 business days after the disclosure is delivered or placed in the mail) would apply and

receipt would be assumed to have occurred on Thursday, which would then start the 3 business day waiting period for consummation, unless the lender had evidence of earlier receipt, e.g. confirmation the consumer opened the CD, in which case the waiting period would start at that time. (See Comments 1026.19(f)(1)(ii)-2; 1026.19(f)(1)(iii)-2; 1026.19(e)(1)(iv)-2.)

Q: When can you disclose the last revised LE and initial CD?

A: Let's breakdown the regulation on this, which is § 1026.19(e)(4) –

1. *“The creditor shall not provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section [revised LE] on or after the date on which the creditor provides the disclosures required under paragraph (f)(1)(i) of this section [initial CD].”*

This means the lender cannot issue/provide the LE on the same day or after the lender issues/provides the initial CD. Example: If the revised LE is issued to the borrower on Tuesday, the earliest day that the initial CD can be issued to the borrower is Wednesday.

2. *“The consumer must receive a revised version of the disclosures required under paragraph (e)(1)(i) of this section [revised LE] not later than four business days prior to consummation.”*

This means the borrower must receive that revised LE at least 4 business days prior to closing/signing. Example: In order to close/sign on Friday, the revised LE must be received no later than Monday (and also the initial CD must be issued and received on Tuesday).

3. *If the revised version of the disclosures required under paragraph (e)(1)(i) of this section [revised LE] is not provided to the consumer in person, the consumer is considered to have received such version three business days after the creditor delivers or places such version in the mail.*

There are 3 primary ways to issue the LE or CD to the borrower: in person, electronically and by mail. When issued by mail or electronically (and in compliance with the ESIGN Act, etc.), we can presume the borrower received the LE or CD using the mailbox rule (i.e. that the consumer is considered to receive the disclosure 3 business days after the disclosure is delivered or placed in the mail). When we have evidence that the borrower received the LE or CD earlier, then we don't need to use the mailbox rule.

Q: Can the last revised LE and the initial CD be received on the same day?

A: Yes, the restriction is that the lender cannot issue/provide the LE and CD on the same day. (See 1026.19(e)(4).)

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