

Legal and Compliance Report—March 2020¹

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CFPB Issues TRID FAQs on Lender Credits

On February 26, 2020, the CFPB published a new set of TRID FAQs concerning to lender credits.² Despite additional commentary included in the 2017 TRID Rule amendments concerning lender credits, there has been continued confusion amongst lenders on the proper disclosure of lender credits, and how to address tolerances and changes of circumstance affecting lender credits. As such, the new FAQs should be well-received by the industry as a continued effort by the CFPB to publish written guidance.

The FAQs address the following questions:

1. **What is a lender credit for the purposes of the TRID Rule?**
2. **What is the difference between a specific lender credit and a general lender credit?**
3. **Is a creditor required to disclose a closing cost and a related lender credit on the Loan Estimate if the creditor will absorb the cost?**
4. **Is a creditor required to disclose a closing cost and related lender credit on the Closing Disclosure if the creditor will absorb the cost?**
5. **How are lender credits disclosed on the Loan Estimate?**
6. **How are lender credits disclosed on the Closing Disclosure?**
7. **How does a creditor disclose lender credits for a loan that the creditor refers to as a “no-cost loan”?**
8. **How does a creditor disclose lender credits if the creditor provides a credit, rebate, or reimbursement to offset specific closing costs charged to the consumer?**
9. **How does a creditor disclose lender credits when it is offsetting a certain dollar amount of closing costs charged to the consumer without specifying which costs it is offsetting?**
10. **Can lender credits change?**

A copy of the TRID FAQs on Lender Credits is attached for your convenience.

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² The CRPB’s TRID FAQs are available at the following link: <https://www.consumerfinance.gov/policy-compliance/guidance/tila-respa-disclosure-rule/tila-respa-integrated-disclosure-faqs/> (last visited March 4, 2020).

additional information and documents to process the consumer's request for a pre-approval or pre-qualification letter. See Comment 2(a)(3)-1.

Conversely, a creditor's pre-approval process may entail a consumer submitting five (or fewer) of the six pieces information that constitute an application for purposes of the TRID Rule, other pieces of information about the consumer's credit history and the collateral value, and some verifying documents. As long as the consumer does not submit all six pieces of information that constitute an application for purposes of the TRID Rule, the requirement to provide a Loan Estimate is not triggered. In that case, the creditor may simply provide a pre-approval letter in compliance with the creditor's practices and applicable law. For example, the letter may need to comply with 12 CFR §1026.19(e)(2)(ii) depending on its content and when it is provided to the consumer.

However, if the creditor or another person represented to the consumer that it will not provide a Loan Estimate without the consumer first submitting verifying documents or any information beyond the six pieces of information that constitute an application, the Bureau or another supervisory or enforcement agency could analyze the conduct under the prohibitions against unfair, deceptive, or abusive acts or practices in the Dodd-Frank Act. See 12 U.S.C. §§ 5531, 5536.

For more information on the six pieces of information that constitute an application for purposes of the TRID Rule, see [TRID Providing Loan Estimates to Consumers Question 1](#).

Lender Credits

QUESTION 1:

What is a lender credit for purposes of the TRID Rule?

ANSWER (UPDATED 02/26/2020):

The regulatory text and commentary for various TRID Rule provisions use the term "lender credit" or "lender credits." See, for example, 12 CFR §§1026.19(e)(3)(iv)(D), 1026.37(a)(13)(ii), 1026.37(d)(1)(i)(D), 1026.37(g)(6)(ii), 1026.38(d)(1)(i)(D), 1026.38(e)(2)(iii)(A), 1026.38(f), 1026.38(h)(3), and 1026.38(t)(5)(ii).

For purposes of the TRID Rule, lender credits include: (1) payments, such as credits, rebates, and reimbursements, that a creditor provides to a consumer to offset closing costs the

consumer will pay as part of the mortgage loan transaction; and (2) premiums in the form of cash that a creditor provides to a consumer in exchange for specific acts, such as for accepting a specific interest rate, or as an incentive, such as to attract consumers away from competing creditors. Comments 17(c)(1)-19, 19(e)(3)(i)-5, 37(g)(6)(ii)-1, and 38(h)(3)-1.

Amounts the consumer or seller pays are not lender credits for purposes of the TRID Rule. For example, amounts that a creditor collects from a consumer, holds for a period of time, and then applies to cover closing costs are not lender credits because, in such cases, the creditor is not providing anything to the consumer. Similarly, amounts that a creditor collects from a consumer, holds for a period of time, and then returns to the consumer later are not lender credits because, in substance, the funds are provided by the consumer rather than the creditor.

QUESTION 2:

What is the difference between a specific lender credit and a general lender credit?

ANSWER (UPDATED 02/26/2020):

For purposes of the TRID Rule, a lender credit can be either a specific lender credit or a non-specific lender credit. Comment 19(e)(3)(i)-5. Non-specific lender credits are also called general lender credits.

A specific lender credit includes a credit, rebate, reimbursement, or similar payment from a creditor to the consumer that offsets all or part of a specific closing cost the consumer will pay. Comment 19(e)(3)(i)-5.

A general lender credit includes a credit, rebate, reimbursement, or similar payment from a creditor to the consumer that offsets all or part of the closing costs but without specifying the particular closing cost or costs that are being offset. Comment 19(e)(3)(i)-5. General lender credits also include premiums in the form of cash that a creditor provides to a consumer in exchange for specific acts or as an incentive. Thus, a creditor that offsets a set dollar amount of costs (without specifying which costs it is offsetting) is providing a general lender credit, not a specific lender credit. For example, a creditor that rebates \$500 of the consumer's closing costs (without specifying which closing costs it is rebating) is providing a general lender credit. By contrast, a creditor that rebates up to \$500 of the consumer's appraisal cost is providing a specific lender credit.

The distinction between specific lender credits and general lender credits is important because specific lender credits and general lender credits are disclosed differently on the Closing Disclosure, as discussed in [TRID Lender Credit Question 6](#).

QUESTION 3:

Is a creditor required to disclose a closing cost and a related lender credit on the Loan Estimate if the creditor will absorb the cost?

ANSWER (UPDATED 02/26/2020):

No. The TRID Rule does not require disclosure of a closing cost and a related lender credit on the Loan Estimate if the creditor incurs a cost, but will not charge the consumer for that cost (i.e., the creditor will “absorb” the cost). In such cases, the absorption of the cost or charge would not “offset” an amount paid by the consumer. However, a creditor must disclose a closing cost and related lender credit on the Loan Estimate if the creditor is offsetting a cost charged to the consumer. Comment 37(g)(6)(ii)-2.

To illustrate, assume a creditor will require an appraisal, credit report, flood determination, title search, and lender’s title insurance policy in connection with a particular mortgage loan transaction. Further assume, that the creditor will incur attorney fees for loan documentation and recording fees in connection with the transaction. If, based on the best information reasonably available, the consumer will only pay an application fee of \$500 and the creditor will absorb all other costs, the creditor is not required to disclose the appraisal fee, credit report fee, flood determination fee, title search fee, lender’s title insurance policy premiums, attorney fees for loan documentation, and recording fees on the Loan Estimate. Conversely, if the creditor agrees to provide a lender credit sufficient to offset all of these charges, except the application fee, the creditor must disclose the charges in the Loan Costs table and Other Costs table, as applicable, and include a corresponding total amount in the Lender Credits disclosure on the Loan Estimate.

Alternatively, the TRID Rule does not prohibit creditors from including amounts for costs that the creditor absorbs (i.e., does not charge the consumer) when the creditor is disclosing Lender Credits in the Total Closing Costs section of the Loan Estimate. Note, however, that the restrictions on decreasing lender credits, discussed in [TRID Lender Credit Question 10](#), apply to any amounts the creditor includes in the Lender Credits disclosure on the Loan Estimate.

QUESTION 4:

Is a creditor required to disclose a closing cost and related lender credit on the Closing Disclosure if the creditor will absorb the cost?

ANSWER (UPDATED 02/26/2020):

Yes, if the closing cost is a cost incurred in connection with the transaction. A creditor must disclose on the Closing Disclosure a closing cost it incurs even if the consumer will not be charged for the closing cost (i.e., the creditor will “absorb” the cost). If a creditor absorbs a cost incurred in connection with the transaction, the creditor must disclose such cost on the Closing Disclosure in the “Paid by Others” column in the Loan Costs or Other Costs table, as applicable.

The TRID Rule requires that the Closing Disclosure include all costs incurred in connection with the transaction. 12 CFR §§1026.38(f) and 1026.38(g). For example, such costs include all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate closing but not required by the creditor. Comment 38(g)(4)-1.

QUESTION 5:

How are lender credits disclosed on the Loan Estimate?

ANSWER (UPDATED 02/26/2020):

To disclose lender credits on the Loan Estimate, the creditor must add together the amounts of all general and specific lender credits. 12 CFR §1026.37(g)(6)(ii), comment 37(g)(6)(ii)-1. The total of all general and specific lender credits is disclosed as a negative number, and labeled as “Lender Credits” in Section J: Total Closing Costs on page 2 of the Loan Estimate. 12 CFR §1026.37(g)(6)(ii). This total (i.e., negative number) must also be disclosed as “Lender Credits” in the Estimated Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Loan Estimate. 12 CFR §1026.37(d)(1)(i)(D).

When including lender credits in the total disclosed on the Loan Estimate, the creditor should ensure that the lender credits are sufficient to cover the costs the creditor represented would be offset. Comment 37(g)(6)(ii)-2. If the exact amount is not known, the creditor must estimate the costs based on the best information reasonably available to the creditor at the time that it provides the Loan Estimate to the consumer. 12 CFR §1026.17(c)(2)(i); comment 17(c)(2)(i)-1.

QUESTION 6:

How are lender credits disclosed on the Closing Disclosure?

ANSWER (UPDATED 02/26/2020):

The requirements for disclosing a lender credit on the Closing Disclosure differ depending on whether the lender credit is a general lender credit or a specific lender credit.

To disclose specific lender credits on the Closing Disclosure, the creditor must separately list the amount of each specific lender credit in either the Loan Costs table or Other Costs table, as applicable, on page 2 of the Closing Disclosure. In either case, the amount of the lender credit is disclosed in the “Paid by Others” column for the row that discloses the specific closing cost to which the lender credit is attributable. Comment 38(h)(3)-1.

To disclose general lender credits on the Closing Disclosure, the creditor must add the amounts of all general lender credits together. The total of the general lender credits is disclosed as a negative number, and labeled as “Lender Credits” in Section J under the Total Closing Costs (Borrower-Paid) subheading on page 2 of the Closing Disclosure. Comment 38(h)(3)-1. The total of the general lender credits must also be disclosed as “Lender Credits” in the Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Closing Disclosure. 12 CFR §1026.38(d)(1)(i)(D).

Additionally, a creditor may provide a lender credit to resolve an excess charge. 12 CFR §1026.38(h)(3). An excess charge is a charge that exceeds the applicable good-faith tolerance limitations set forth in 12 CFR §1026.19(e)(3). If the creditor opts to resolve the excess charge through a lender credit: (1) the amount of the lender credit is included in the Closing Costs at the bottom of page 1 and in the Lender Credits disclosed in Section J under the Total Closing Costs (Borrower Paid) subheading on page 2; and (2) the creditor must include a statement notifying the consumer that the creditor is paying the amount to offset an excess charge and that the amount is included as part of Lender Credits. Comment 38(h)(3)-2; see also Form H-25(F) of Appendix H to Regulation Z for an example of this statement.

QUESTION 7:

How does a creditor disclose lender credits for a loan that the creditor refers to as a “no-cost loan”?

ANSWER (UPDATED 02/26/2020):

The answer depends on whether the creditor is absorbing closing costs as well as whether the creditor is offsetting costs for specific settlement services. If the creditor is incurring closing costs, but will not be charging the consumer for some or all of the closing costs at or before consummation (i.e., the creditor is “absorbing” closing costs), see [TRID Lender Credit Questions 3](#) and [4](#). If the creditor is offsetting some or all of the costs for specific settlement services that are being charged to the consumer in connection with the loan, see [TRID Lender Credit Question 8](#). If the creditor is offsetting all or a portion of the costs that are being charged to the consumer, but not offsetting charges for specific settlement services, see [TRID Lender Credit Question 9](#).

QUESTION 8:

How does a creditor disclose lender credits if the creditor provides a credit, rebate, or reimbursement to offset specific closing costs charged to the consumer?

ANSWER (UPDATED 02/26/2020):

If a creditor is providing lender credits to offset specific closing costs charged to the consumer, whether some or all of these closing costs, the creditor is providing one or more specific lender credits. Comments 19(e)(3)(i)-5 and 37(g)(6)(ii)-2.

On the Loan Estimate, the creditor must disclose each of the closing costs charged to the consumer in the Loan Costs and Other Costs table, as applicable. 12 CFR §§1026.19(e)(1)(i), 1026.37(f), and 1026.37(g). The creditor must also include a corresponding total amount (as a negative number) in the amount disclosed as “Lender Credits” in Section J: Total Closing Costs on page 2 and in the amount disclosed as “Lender Credits” in the Estimated Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Loan Estimate. 12 CFR §§1026.37(d)(1)(i)(D) and 1026.37(g)(6)(ii). The creditor should ensure that the amount disclosed as Lender Credits is sufficient to cover the costs the creditor represented that the consumer would not have to pay at consummation. Comment 37(g)(6)(ii)-2. If the exact amount of the costs is not known, the creditor must estimate the costs based on the best

information reasonably available to the creditor at the time that it provides the Loan Estimate to the consumer. 12 CFR §1026.17(c)(2)(i); Comment 17(c)(2)(i)-1.

On the Closing Disclosure, the creditor must disclose the closing costs in the Loan Costs or Other Costs table, as applicable, with each closing cost in the “Paid by Others” column for the row that discloses the specific closing cost to which the lender credit is attributable. Comment 38(h)(3)-1.

QUESTION 9:

How does a creditor disclose lender credits when it is offsetting a certain dollar amount of closing costs charged to the consumer without specifying which costs it is offsetting?

ANSWER (UPDATED 02/26/2020):

If a creditor is providing a lender credit to offset a certain dollar amount of closing costs charged to the consumer without specifying which costs, it is providing a general lender credit. If the creditor is providing such lender credits in a certain dollar amount, it is providing a general lender credit, even if the amount is enough to offset all the closing costs charged to the consumer.

On the Loan Estimate, the general lender credit must be included in the total amount, as a negative number, in the “Lender Credits” disclosure in Section J: Total Closing Costs on page 2 of the Loan Estimate. Comment 37(g)(6)(ii)-1. It must also be included in the amount disclosed as “Lender Credits” in the Estimated Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Loan Estimate. 12 CFR §1026.37(d)(1)(i)(D).

On the Closing Disclosure, the general lender credit must be included as a negative number in the amount disclosed as “Lender Credits” in Section J under the Total Closing Costs (Borrower-Paid) subheading on page 2 of the Closing Disclosure, and in the amount disclosed as “Lender Credits” in the Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Closing Disclosure. 12 CFR §§1026.38(d)(1)(i)(D) and 1026.38(h)(3); Comment 38(h)(3)-1.

QUESTION 10:

Can lender credits change?

ANSWER (UPDATED 02/26/2020):

Yes, but only in certain circumstances. Regulation Z does not limit a creditor's ability to increase the amount of lender credits disclosed on the Loan Estimate. However, a decrease in the amount of the lender credits disclosed on the Loan Estimate can lead to a violation of the good faith disclosure standard under 12 CFR §1026.19(e)(3) (i.e., a tolerance violation). Lender credits may decrease only if there is an accompanying changed circumstance or other triggering event under 12 CFR §1026.19(e)(3)(iv), and the creditor provides the consumer with a revised estimate within three business days of receiving information sufficient to establish that the changed circumstance or other triggering event has occurred. 12 CFR §1026.19(e)(4).

The TRID Rule requires that all estimated closing costs that the consumer will pay be disclosed in good faith. Generally, an estimated closing cost is disclosed in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed or is otherwise within applicable tolerance standards. 12 CFR §1026.19(e)(3).

The actual total amount of lender credits, whether specific or general (i.e., non-specific), provided by the creditor that is less than the estimated lender credits disclosed on the Loan Estimate is an increased charge to the consumer for purposes of determining good faith under the TRID Rule. Comment 19(e)(3)(i)-5. Specifically, the total amount of lender credits (specific and general) actually provided to the consumer is compared to the amount of the lender credits identified in Section J: Total Closing Costs on page 2 of the Loan Estimate. Comments 19(e)(3)(i)-5 and -6.

Essentially, lender credits are a negative charge to the consumer subject to the good faith requirements of the TRID Rule, and must be considered when determining whether disclosures were made in good faith and within applicable tolerance standards. For example, if the creditor discloses a \$750 estimate for lender credits on the Loan Estimate, but only \$500 of lender credits is actually provided to the consumer, the actual amount of lender credits provided is less than the estimated lender credits disclosed on the Loan Estimate, and is therefore, an increased charge to the consumer for purposes of determining good faith under 12 CFR §1026.19(e)(3)(i).

Specifically, absent a changed circumstance or other triggering event, the amount of the total specific and general lender credits actually provided to the consumer cannot be less than the

amount of lender credits disclosed in Section J: Total Closing Costs on page 2 of the Loan Estimate (i.e., the total lender credits cannot decrease).

If a changed circumstance or other triggering event causes a lender credit to decrease, the creditor is not subject to a tolerance violation, assuming the other requirements for resetting tolerances are met. 12 CFR §1026.19(e)(3)(iv) and (e)(4); comment 19(e)(3)(i)-5; and the 2013 Final Rule, 78 *Federal Register* at 79824.