Imagine a world where mortgage originators are constantly issuing second or third Closing Disclosures (CDs) to borrowers because of fee adjustments, with each fee change triggering TRID rules requiring a new CD to be issued. Each reissued CD pushes back closings to accommodate reviews by underwriters, closing agents or borrowers’ attorneys. Sound familiar? You are not alone. This nightmare scenario is a reality for many mortgage companies across the nation.

Flawed CDs and missed opportunities for benefiting from changes of circumstances are the main culprits for closing delays and inaccurate fees. Are loan processors being too proactive when they try to avoid delays and work around CD delivery constraints by issuing initial CDs too soon, thus costing their companies even higher costs and cures? The answer is a resounding “Yes!”

Issuing the Closing Disclosure (CD) is a tricky part of the loan origination process. Under the new TRID consumer-disclosure rules, mortgage companies must validate that borrowers received their initial CD three business days before closing. The process is straightforward:

1. Generate the initial CD.
2. Validate receipt.
3. Issue the final CD.

The new rules are designed to protect consumers, but they also create challenges for mortgage companies. The key is to get the timing just right. Setting up a process to automatically reissue CDs when fee changes occur is one solution. However, it requires robust back-end integration and careful monitoring to ensure accuracy.

Janice Minchenberg is director of implementation management at Digital Risk. She has 31 years’ experience in residential mortgage lending, with the last six working with the Encompass Banker/ E360 platform. Minchenberg served previously as senior vice president at Premier Commercial Bank, where she built the mortgage division from the ground up. She has extensive experience as a top-producing sales professional, and has held several senior management positions in quality control and compliance. Reach her at janice.minchenberg@digitalrisk.com.
days prior to their closing. Thus, loan processors should send CDs as much as six business days prior to the consummation date if the CD is delivered through regular mail. Further, certain changes to CDs cause the three-day rule to start over again — including changes in the annual percentage rate, or APR, that violate tolerances; additions of prepayment penalties; and changes in loan product.

These time limits are placing a tremendous amount of pressure on companies to get CDs out to borrowers on time, or to reissue CDs as soon as possible should errors and/or changes be identified. Either circumstance could delay a closing, which hurts the bottom line and frustrates borrowers. Loan processors need clarification on how to handle unexpected events that can occur after the initial CD is prepared but before closing, as well as guidance on handling errors that get discovered after closing. This will not only help preserve a mortgage company’s bottom line but also protect them from civil liability.

In a response letter sent this past April by the Consumer Financial Protection Bureau (CFPB) to Sen. Bob Corker, R-Tenn., Director Richard Cordray clarified that indemnification agreements that lenders and closing agents have in place for mortgage transactions will not allow lenders to unilaterally shift their liability for errors to such agents. This past May, the CFPB published versions of the CD and the Loan Estimate (LE) forms with annotations from chapter 2 (Part B) of the Truth in Lending Act (TILA). This is important because provisions under Part B are more likely to be subject to civil liability under TILA section 130. Thus, mortgage companies may experience increased potential liability under TRID.

The letter from Sen. Corker that prompted Cordray’s response was just one of many requests to the CFPB for more clarity. Although the CFPB proposed changes to its TRID consumer-disclosure rules in late July to provide clarification, the stakes are currently — and will seemingly continue to be — quite high. TRID errors resulting from miscommunication or misunderstanding could result in steep fees and penalties. Thus, many mortgage companies are opting to eat the costs of cures in order to avoid such penalties, but this method also chips away at the bottom line.

What are the solutions?
So what can you do to avoid issues stemming from reissuing CDs? Be proactive — just not too proactive. Many mortgage companies are issuing CDs prematurely, which causes borrowers to be skeptical of the figures on the document because they review them as just another LE.

Some companies are even telling borrowers that the initial CD does not represent the final closing costs and that another CD will be provided at closing. This leaves borrowers less than satisfied with the experience and without confidence in the estimated amount of funds to wire to the closing table. Hopefully, these two situations do not ring a bell.

Trying to “beat the clock” has backfired on many lenders. Inaccurate figures on the initial CD may result in costly cures. Cash-to-close figures that are higher than those outlined in the initial CD will cause delays for the borrower in obtaining accurate closing funds, as well as additional trips back to the underwriter to recalculate figures, causing further delays and poor customer service.

Sending the CD too early will reduce a company’s opportunity to provide clearly defined changes of circumstance with a prior re-disclosed LE. Changes are permitted after the CD has been issued, but they are harder to track for all parties involved. Companies must find a way to take the initial CD figures more seriously. Of course this is easier said than done, but it is important that they don’t just throw another cost estimate out there. Make it count.

Best-in-class process
There are TRID experts who can either perform a preclosing quality-control review on behalf of the mortgage company or provide consultation on how to streamline the process and reduce the risk of errors. Some of the most common TRID errors pointed out in an Association of Mortgage Investors’ (AMI) March 30th letter to the CFPB’s Cordray, for example, can be addressed by a third party. These include numerical-computation errors; missing or incomplete closing information; and inaccurate or incomplete estimated taxes, insurance and assessments checkboxes.

Numerical computation errors include missteps such as itemization of loan costs that do not equal the total loan costs on page two of the CD form. Problematic closing information can include a missing closing date; a missing or inaccurate settlement agent name or file number; missing transaction information, such as the seller’s name and address; and missing loan information, like an absent loan ID number.

A TRID expert also can catch verification issues, such as failing to vet the actual appraisal and credit invoices before issuing the initial CD, thereby missing the opportunity to provide a change of circumstance that validates a fee increase. Other issues include not verifying the rate-lock information with the borrower prior to sending the initial CD, or not monitoring rate-lock expirations and issuing the initial CD before extending a lock — which could cause the lender to absorb the cost of the rate-lock extension.

Table data is another area where issues can arise. A reviewer should check to ensure the Prepaids table includes the applicable time period covered by the amount to be paid by the borrower as well as the total amount paid. The reviewer also should verify that the Loan Costs and Other Costs tables do not include fees for services not previously disclosed.

The review also should ensure the Initial Escrow Payment at Closing table includes the amount escrowed per month for each item, the number of months collected at consummation and the total amount paid. In addition, the reviewer should check to make sure the Calculating Cash to Close table reflects “Yes” when the amount changes from the LE to the final CD and that there is a notation indicating where the borrower can find the amounts that have changed on the LE.

Finally, a thorough TRID review should ensure that the fees listed under the Closing Cost Details section of the CD form match the...

Continued >>
closing costs listed on the most current revised LE issued. While the issues listed here may not cause a cure, they may increase liability and cause loan delays. Preclosing reviews performed by a third party can prevent lenders from facing costly tolerance-cure requirements and ensure that re-issuing CDs does not disrupt the file flow and overall turnaround times.

Some companies have added this preclosing-review step into their process between the loan processor and the closer, and they are still meeting important date requirements while saving money by avoiding unnecessary cures. This process, whether performed internally or through a third party, reviews the last LE issued against the most recent loan costs.

The ideal situation is managing pipelines to review loans 10 days prior to the estimated closing date — before the final approval. This step increases a company’s ability to catch approved changes of circumstance before the three-day window to re-disclose.

This type of review requires a few documents and milestones to have been met before issuing the initial CD, including conditional approval, locked loans that will not expire prior to estimated closing, a confirmed estimated-closing date, proof of insurance with premiums confirmed, proof of property taxes confirmed and validated invoices for services provided that could impact tolerances. The reviewer used for this role, whether in-house or outsourced, must be knowledgeable on the impact of the fee placement, wording, rounding and approved changes of circumstance, as well as important dates that could impact the disclosures.

Taking the extra time to ensure that the initial CD is as close to accurate as possible will avoid costly cures, reduce liability, and ensure that borrowers and partnering closing attorneys have confidence in the closing costs. This solution may not sound familiar now, but mortgage companies hoping to stay in business will need to adopt a similar scenario. Thus, a world where the CD is issued once within required time frames leading up to the closing should soon be a reality, which helps lenders enjoy a stronger bottom line and higher borrower satisfaction.