BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1002, 1024, and 1026

Docket No. CFPB-2013-0018

RIN 3170-AA37

Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: This final rule amends some of the final mortgage rules issued by the Bureau of Consumer Financial Protection (Bureau) in January 2013. These amendments focus primarily on loss mitigation procedures under Regulation X's servicing provisions, amounts counted as loan originator compensation to retailers of manufactured homes and their employees for purposes of applying points and fees thresholds under the Home Ownership and Equity Protection Act and the Ability-to-Repay rules in Regulation Z, exemptions available to creditors that operate predominantly in "rural or underserved" areas for various purposes under the mortgage regulations, application of the loan originator compensation rules to bank tellers and similar staff, and the prohibition on creditor-financed credit insurance. The Bureau also is adjusting the effective dates for certain provisions of the loan originator compensation rules. In addition, the Bureau is adopting technical and wording changes for clarification purposes to Regulations B, X, and Z.

DATES: This rule changes the effective date of §§ 1026.25(c)(2), 1026.36(a), (b), (d), (e), (f), and (j) and commentary to §§ 1026.25(c)(2) and 1026.36(a), (b), (d), (e), (f), and (j) in Supp. I to part 1026, as adopted by the 2013 Loan Originator Compensation Final Rule, 78 FR 11280 (Feb. 15, 2013), to January 1, 2014. In addition, the amendments to §§ 1026.35(b)(2)(iii), 1026.36(a), (b), and (j), and commentary to §§ 1026.25(c)(2), 1026.35 and 1026.36(a), (b), (d), and (f) in Supp. I to part 1026 adopted by this final rule are effective January 1, 2014. All other provisions of this final rule are effective January 10, 2014.

FOR FURTHER INFORMATION CONTACT: Whitney Patross, Attorney; Richard Arculin, William Corbett, Michael Silver, and Daniel Brown, Counsels; Mark Morelli and Nicholas Hluchyj, Senior Counsels, and Paul Ceja, Senior Counsel and Special Advisor, Office of Regulations, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Summary of Final Rule

In January 2013, the Bureau issued several final rules concerning mortgage markets in the United States (2013 Title XIV Final Rules), pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law No. 111-203, 124 Stat. 1376 (2010).[1] In June 2013, the Bureau proposed several amendments to those final rules ("June 2013

[1] Specifically, on January 10, 2013, the Bureau issued Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4726 (Jan. 22, 2013) (2013 Escrows Final Rule), High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X), 78 FR 6856 (Jan. 31, 2013) (2013 HOEPA Final Rule), and Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 FR 6407 (Jan. 30, 2013) (2013 ATR Final Rule). The Bureau concurrently issued a proposal to amend the 2013 ATR Final Rule, which was finalized on May 29, 2013. See 78 FR 6621 (Jan. 30, 2013) and 78 FR 35430 (June 12, 2013). On January 17, 2013, the Bureau issued the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules, 78 FR 10901 (Regulation Z) (Feb. 14, 2013) and 78 FR 10695 (Regulation X) (Feb. 14, 2013) (2013 Mortgage Servicing Final Rules). On January 18, 2013, the Bureau issued the Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 FR 7215 (Jan. 31, 2013) (2013 ECOA Final Rule) and, jointly with other agencies, issued Appraisals for Higher-Priced Mortgage Loans, 78 FR 10367 (Feb. 13, 2013). On January 20,

Proposal").[2] This final rule adopts with some revisions and additional clarifications the June 2013 Proposal. It makes several amendments to the provisions adopted by the 2013 Title XIV Final Rules to clarify or revise regulatory provisions and official interpretations primarily relating to the 2013 Mortgage Servicing Final Rules and the 2013 Loan Originator Compensation Final Rule, as described further below. This final rule also makes modifications to the effective dates for provisions adopted by the 2013 Loan Originator Compensation Final Rule, and certain technical corrections and minor refinements to Regulations B, X, and Z. The specifics of these amendments and modifications are discussed in the following paragraphs.

First, the Bureau is adopting several modifications to provisions of Regulation X adopted by the 2013 Mortgage Servicing Final Rules, including those related to error resolution procedures and information requests (§§ 1024.35 and 1024.36), and loss mitigation (§ 1024.41). With respect to loss mitigation, two of the revisions concern the requirement in § 1024.41(b)(2)(i) that a servicer review a borrower's loss mitigation application within five days and provide a notice to the borrower acknowledging receipt and informing the borrower whether the application is complete or incomplete. If the servicer does not deem the application complete, the servicer's notice must also list the missing items and suggest the borrower provide the information by the earliest remaining of four dates specified in the regulation. The changes replace the four specified dates with a requirement that a servicer give a borrower a reasonable date by which the borrower should in which to provide the missing information. New commentary explains the four dates previously specified in the regulation are now treated as

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2013, the Bureau issued the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11280 (Feb. 15, 2013) (2013 Loan Originator Compensation Final Rule).

[2] Amendments to the 2013 Mortgage Rules Under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z), 78 FR 39902 (July 2, 2013).

milestones that the servicer should consider in selecting a reasonable date, however the final rule allows servicers more flexibility than the existing rule. The changes also set forth requirements and procedures for a servicer to follow in the event that a facially complete application is later found by the servicer to require additional information or corrections to a previously submitted document in order to be evaluated for loss mitigation options available to the borrower. Another modification provides servicers more flexibility in providing short-term payment forbearance plans based on an evaluation of an incomplete loss mitigation application. Other clarifications and revisions address the content of notices required under § 1024.41(c)(1)(ii) and (h)(4), which inform borrowers of the outcomes of their evaluation for loss mitigation and any appeals filed by the borrowers. In addition, the amendments address how protections are determined to apply where a foreclosure sale has not been scheduled at the time the borrower submits a loss mitigation application or when a foreclosure sale is rescheduled. Finally, the amendments explain what actions constitute the "first notice or filing" for purposes of the general ban on proceeding to foreclosure before a borrower is 120 days delinquent, and provide exemptions from the 120-day prohibition for foreclosures for certain reasons other than nonpayment.

Second, the Bureau is clarifying and revising the definition of points and fees for purposes of the qualified mortgage points and fees cap and the high-cost mortgage points and fees threshold, as adopted in the 2013 ATR Final Rule and the 2013 HOEPA Final Rule, respectively. In particular, the Bureau is adding commentary to § 1026.32(b)(1)(ii) to clarify for retailers of manufactured homes and their employees what compensation must be counted as loan originator compensation and thus included in the points and fees thresholds. The Bureau also is adding commentary to clarify the treatment of charges paid by parties other than the consumer, including third parties, for purposes of the points and fees thresholds.

Third, the Bureau is revising two exceptions available under the 2013 Title XIV Final Rules to small creditors operating predominantly in "rural" or "underserved" areas pending the Bureau's re-examination of the underlying definitions of "rural" or "underserved" over the next two years, as it recently announced it would do in Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z) (May 2013 ATR Final Rule).[3] The Bureau is extending an exception to the general prohibition on balloon features for high-cost mortgages under § 1026.32(d)(1)(ii)(C) to allow all small creditors, regardless of whether they operate predominantly in "rural" or "underserved" areas, to continue originating balloon high-cost mortgages if the loans meet the requirements for qualified mortgages under §§ 1026.43(e)(6) or 1026.43(f). In addition, the Bureau is amending an exemption from the requirement to establish escrow accounts for higher-priced mortgage loans under § 1026.35(b)(2)(iii)(A) for small creditors that extend more than 50 percent of their total covered transactions secured by a first lien in "rural" or "underserved" counties during the preceding calendar year. To prevent creditors that qualified for the exemption in 2013 from losing eligibility in 2014 or 2015 because of changes in which counties are considered rural while the Bureau is re-evaluating the underlying definition of "rural," the Bureau is amending this provision to allow creditors to qualify for the exemption if they extended more than 50 percent of their total covered transactions in rural or underserved counties in any of the previous three calendar years (assuming the other criteria for eligibility are also met).

Fourth, the Bureau is adopting revisions, as well as general technical and wording changes, to various provisions of the 2013 Loan Originator Compensation Final Rule in § 1026.36. These include revising the definition of "loan originator" in the regulatory text and

[3] 78 FR 35430 (June 12, 2013)

commentary, such as provisions addressing when employees of a creditor or loan originator in certain administrative or clerical roles (*e.g.*, tellers or greeters) may become "loan originators" and thus subject to the rule, upon providing contact information or credit applications for loan originators or creditors to consumers; further clarification on the meaning of "credit terms," which is used throughout § 1026.36(a); and additional clarifications regarding when employees of manufactured housing retailers may be classified as loan originators. The Bureau also is adopting a number of clarifications to the commentary on prohibited payments to loan originators.

Fifth, the Bureau is clarifying and revising three aspects of the rules implementing the Dodd-Frank Act prohibition on creditors financing credit insurance premiums in connection with certain consumer credit transactions secured by a dwelling. The Bureau is adding new § 1026.36(i)(2)(ii) to clarify what constitutes financing of such premiums by a creditor. The Bureau also is adding new § 1026.36(i)(2)(iii) to clarify when credit insurance premiums are considered to be calculated and paid on a monthly basis, for purposes of the statutory exclusion from the prohibition for certain credit insurance premium calculation and payment arrangements. And, finally, the Bureau is adding new comment 36(i)-1 to clarify when including the credit insurance premium or fee in the amount owed violates the rule.

Sixth, the Bureau is changing the effective date for certain provisions under the 2013 Loan Originator Compensation Final Rule, so they take effect on January 1, 2014, rather than January 10, 2014, as originally provided. The affected provisions are the amendments to or additions of (as applicable) § 1026.25(c)(2) (record retention), § 1026.36(a) (definitions), § 1026.36(b) (scope), § 1026.36(d) (compensation), § 1026.36(e) (anti-steering), § 1026.36(f) (qualifications), and § 1026.36(j) (compliance policies and procedures for depository institutions) and the associated commentary. The Bureau believes that this change will facilitate compliance because these provisions largely focus on compensation plan structures, registration and licensing, and hiring and training requirements that are often structured on an annual basis and typically do not vary from transaction to transaction. After reviewing comments, the Bureau has decided to keep the date for implementation of the ban on financing credit insurance under § 1026.36(i) as January 10, 2014, consistent with the date previously adopted in the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z); Prohibition on Financing Credit Insurance Premiums; Delay of Effective Date (2013 Effective Date Final Rule).[4]

In addition to the clarifications and amendments to Regulations X and Z discussed above, the Bureau is adopting technical corrections and minor clarifications to wording throughout Regulations B, X, and Z that are generally not substantive in nature.

II. Background

A. Title XIV Rules under the Dodd-Frank Act

In response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression, Congress passed the Dodd-Frank Act, which was signed into law on July 21, 2010. Pub. L. No. 111-203, 124 Stat. 1376 (2010). In the Dodd-Frank Act, Congress established the Bureau and, under sections 1061 and 1100A, generally consolidated the rulemaking authority for Federal consumer financial laws, including the Equal Credit Opportunity Act (ECOA), Truth in Lending Act (TILA), and Real Estate Settlement Procedures Act (RESPA), in the Bureau.[5] At the same time, Congress

[4] 78 FR 32547 (May 31, 2013).
[5] Sections 1011 and 1021 of the Dodd-Frank Act, in title X, the "Consumer Financial Protection Act," Public Law 111-203, sections 1001-1100H, codified at 12 U.S.C. 5491, 5511. The Consumer Financial Protection Act is

significantly amended the statutory requirements governing mortgage practices with the intent to restrict the practices that contributed to and exacerbated the crisis. Under the statute, most of these new requirements would have taken effect automatically on January 21, 2013, if the Bureau had not issued implementing regulations by that date. [6] To avoid uncertainty and potential disruption in the national mortgage market at a time of economic vulnerability, the Bureau issued several final rules in a span of less than two weeks in January 2013 to implement these new statutory provisions and provide for an orderly transition.

On January 10, 2013, the Bureau issued the 2013 ATR Final Rule, the 2013 Escrows Final Rule, and the 2013 HOEPA Final Rule. On January 17, 2013, the Bureau issued the 2013 Mortgage Servicing Final Rules. On January 18, 2013, the Bureau issued Appraisals for Higher-Priced Mortgage Loans [7] (issued jointly with other agencies) and the 2013 ECOA Final Rule. On January 20, 2013, the Bureau issued the 2013 Loan Originator Compensation Final Rule. Most of these rules will become effective on January 10, 2014.

Concurrent with the 2013 ATR Final Rule, on January 10, 2013, the Bureau issued Proposed Amendments to the Ability to Repay Standards Under the Truth in Lending Act (Regulation Z) (2013 ATR Concurrent Proposal), which the Bureau finalized on May 29, 2013 (May 2013 ATR Final Rule).[8]

B. Implementation Initiative for New Mortgage Rules

On February 13, 2013, the Bureau announced an initiative to support implementation of

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substantially codified at 12 U.S.C. 5481-5603. Section 1029 of the Dodd-Frank Act excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. 12 U.S.C. 5519.

[6] Dodd-Frank Act section 1400(c), 15 U.S.C. 1601 note.

[7] 78 FR 10367 (Feb. 13, 2013).

[8] 78 FR 6622 (Jan. 30, 2013); 78 FR 35430 (June 12, 2013).

its new mortgage rules (Implementation Plan),[9] under which the Bureau would work with the mortgage industry and other stakeholders to ensure that the new rules can be implemented accurately and expeditiously. The Implementation Plan includes: (1) coordination with other agencies, including to develop consistent, updated examination procedures; (2) publication of plain-language guides to the new rules; (3) publication of additional corrections and clarifications of the new rules, as needed; (4) publication of readiness guides for the new rules; and (5) education of consumers on the new rules.

In the June 2013 proposal, the Bureau proposed amendments to its new mortgage rules. This final rule adopts those proposed amendments with some additional clarifications and revisions. The purpose of these updates is to address important questions raised by industry, consumer groups, or other agencies.

C. Comments on the Proposed Rule

The Bureau received 280 comments on the proposed rule on which the final rule is based. Many of these comments discussed issues on which the proposed rule did not seek comment or address. A number of comments addressed, for example, the small servicer exemption, the general effective dates for the 2013 Title XIV Rules finalized in January 2013, whether the Bureau should reconsider replacing the § 1026.36(a) definition of “loan originator” with the definition provided under the SAFE Act, or whether the Bureau should amend the provision of the mortgage servicing rules that deals with second or successive loss mitigation applications. This final rule does not make any changes outside the scope of the proposal. As proposed, it focuses on specific, narrow implementation and interpretive issues, rather than broader policy changes.

[9] Consumer Financial Protection Bureau Lays Out Implementation Plan for New Mortgage Rules. Press Release. Feb. 13, 2013.

The Bureau has examined all comments submitted and discusses those that were responsive to the proposal in the section-by-section analysis below.

III. Legal Authority

The Bureau is issuing this final rule pursuant to its authority under ECOA, TILA, RESPA, and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the "consumer financial protection functions" previously vested in certain other Federal agencies, including the Board of Governors of the Federal Reserve System (Federal Reserve Board). The term "consumer financial protection function" is defined to include "all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines."[10] Section 1061 of the Dodd-Frank Act also transferred to the Bureau all of the Department of Housing and Urban Development's (HUD) consumer protection functions relating to RESPA.[11] Title X of the Dodd-Frank Act, including section 1061 of the Dodd-Frank Act, along with ECOA, TILA, RESPA, and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[12]

A. ECOA

Section 703(a) of ECOA authorizes the Bureau to prescribe regulations to carry out the purposes of ECOA. Section 703(a) further states that such regulations may contain—but are not limited to—such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions as, in the judgment of the Bureau, are

[10] 12 U.S.C. 5581(a)(1).
[11] Public Law 111-203, 124 Stat. 1376, section 1061(b)(7); 12 U.S.C. 5581(b)(7).
[12] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws" and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining "enumerated consumer laws" to include TILA), Dodd-Frank section 1400(b), 15 U.S.C. 1601 note (defining "enumerated consumer laws" to include certain subtitles and provisions of Title XIV).

necessary or proper to effectuate the purposes of ECOA, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance. 15 U.S.C. 1691b(a).

B. RESPA

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which include its consumer protection purposes. In addition, section 6(j)(3) of RESPA, 12 U.S.C. 2605(j)(3), authorizes the Bureau to establish any requirements necessary to carry out section 6 of RESPA, and section 6(k)(1)(E) of RESPA, 12 U.S.C. 2605(k)(1)(E), authorizes the Bureau to prescribe regulations that are appropriate to carry out RESPA's consumer protection purposes. As identified in the 2013 RESPA Servicing Final Rule, the consumer protection purposes of RESPA include ensuring that servicers respond to borrower requests and complaints in a timely manner and maintain and provide accurate information, helping borrowers avoid unwarranted or unnecessary costs and fees, and facilitating review for foreclosure avoidance options.

C. TILA

Section 105(a) of TILA, 15 U.S.C. 1604(a), authorizes the Bureau to prescribe regulations to carry out the purposes of TILA. Under section 105(a), such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit."

TILA section 102(a), 15 U.S.C. 1601(a). In particular, it is a purpose of TILA section 129C, as amended by the Dodd-Frank Act, to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, and abusive. Section 105(f) of TILA, 15 U.S.C. 1604(f), authorizes the Bureau to exempt from all or part of TILA any class of transactions if the Bureau determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. Under TILA section 103(bb)(4), the Bureau may adjust the definition of points and fees for purposes of that threshold to include such charges that the Bureau determines to be appropriate.

TILA section 129C(b)(3)(B)(i) provides the Bureau with authority to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of the ability-to-repay requirements; or are necessary and appropriate to effectuate the purposes of the ability-to-repay requirements, to prevent circumvention or evasion thereof, or to facilitate compliance with TILA sections 129B and 129C. 15 U.S.C. 1639c(b)(3)(B)(i). In addition, TILA section 129C(b)(3)(A) requires the Bureau to prescribe regulations to carry out the purposes of the qualified mortgage provisions, such as to ensure that responsible and affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C. 15 U.S.C. 1639c(b)(3)(A).

D. The Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof." 12 U.S.C. 5512(b)(1). Title X of the Dodd-Frank Act is a Federal consumer financial law. Accordingly, the Bureau is exercising its authority under the Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of ECOA, RESPA, TILA, title X, and the enumerated subtitles and provisions of title XIV of the Dodd-Frank Act, and prevent evasion of those laws.

Section 1032(a) of the Dodd-Frank Act provides that the Bureau "may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances." 12 U.S.C. 5532(a). The authority granted to the Bureau in Dodd-Frank Act section 1032(a) is broad, and empowers the Bureau to prescribe rules regarding the disclosure of the "features" of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to Dodd-Frank Act section 1032, the Bureau "shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services." 12 U.S.C. 5532(c). Accordingly, in amending provisions authorized under Dodd-Frank Act section 1032(a), the Bureau has considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

The Bureau is amending rules finalized in January 2013 that implement certain Dodd-Frank Act provisions. In particular, the Bureau is amending regulatory provisions adopted by the 2013 ECOA Final Rule, the 2013 Mortgage Servicing Final Rules, the 2013 HOEPA Final Rule, the 2013 Escrows Final Rule, the 2013 Loan Originator Compensation Final Rule, and the 2013 ATR Final Rule.

IV. Effective Dates

A. Provisions Other Than Those Related to the 2013 Loan Originator Compensation Final Rule or the 2013 Escrows Final Rule

In enacting the Dodd-Frank Act, Congress significantly amended the statutory requirements governing a number of mortgage practices. Under the Dodd-Frank Act, most of these new requirements would have taken effect automatically on January 21, 2013, if the Bureau had not issued implementing regulations by that date.[13] Where the Bureau was required to prescribe implementing regulations, the Dodd-Frank Act further provided that those regulations must take effect not later than 12 months after the date of the regulations' issuance in final form.[14] The Bureau issued the 2013 Title XIV Final Rules in January 2013 to implement these new statutory provisions and provide for an orderly transition. To allow the mortgage industry sufficient time to comply with the new rules, the Bureau established January 10, 2014—one year after issuance of the earliest of the 2013 Title XIV Final Rules—as the baseline effective date for nearly all of the new requirements. In the preamble to certain of the various

[13] Dodd-Frank Act section 1400(c)(3), 15 U.S.C. 1601 note.
[14] Dodd-Frank Act section 1400(c)(1)(B), 15 U.S.C. 1601 note.

2013 Title XIV Final Rules, the Bureau further specified that the new regulations would apply to transactions for which applications were received on or after January 10, 2014.

Except for the amendments regarding the 2013 Loan Originator Compensation Final Rule and the 2013 Escrows Final Rule discussed below, the Bureau proposed an effective date of January 10, 2014. The Bureau proposed this effective date because it is consistent with the effective dates for the 2013 Title XIV Final Rules, which this final rule clarifies, revises, or amends. Most of the proposed amendments were intended to clarify application of certain aspects of these rules in advance of the January 10, 2014 effective date, or amend them in manners that facilitate compliance. As discussed in the various 2013 Title XIV Final Rules, the Bureau believes that having a consistent effective date across most of the 2013 Title XIV Final Rules will facilitate compliance. This includes any clarifications, revisions, or other amendments made during the implementation period—particularly those amendments designed to facilitate compliance with the overarching 2013 Title XIV Final Rules. Thus, because the clarifications, revisions, and amendments to the 2013 Title XIV Final Rules adopted in this final rule interrelate with or depend on other aspects of the underlying 2013 Title XIV Final Rules and are intended largely to facilitate compliance with those rules, the Bureau does not believe that the amendments adopted by this final rule should become effective on a different date than the underlying regulations. The Bureau thus proposed an effective date of January 10, 2014 for any amendments adopted by this final rule.

The Bureau received some comments from industry and trade associations that addressed the effective dates, but most of these comments generally requested a delayed effective date across all the rules, which the Bureau did not propose. The Bureau received a handful of comments that asked for staggered effective dates for the amended rules, but none of these comments provided a reasonable means of implementing the proposed amendments at a date later than the underlying regulations the proposal would have amended. Despite these comments, the Bureau remains persuaded that it would be impracticable for these amendments to take effect later than the underlying regulations they amend. Moreover, the Bureau believes that these amendments should help industry participants comply with the other components of the 2013 Title XIV Final Rules, which in most cases also will take effect January 10, 2014. The Bureau thus is adopting the effective date of January 10, 2014, for the amendments in this document other than as discussed in parts IV.B and IV.C below.

B. For Provisions Related to the 2013 Escrows Final Rule

The Bureau proposed an effective date of January 1, 2014 for the amendments to the new provisions in § 1026.35 that govern higher-priced mortgage loan escrow requirements, which took effect on June 1, 2013. While the Bureau established January 10, 2014 as the baseline effective date for most of the 2013 Title XIV Final Rules, it identified certain provisions that it believed did not present significant implementation burdens for industry, including amendments to § 1026.35 adopted by the 2013 Escrows Final Rule. For these provisions, the Bureau set an earlier effective date of June 1, 2013. The proposal would have amended one such provision, § 1026.35(b)(2)(iii)(A), which provides an exemption from the higher-priced mortgage loan escrow requirement to creditors that extend more than 50 percent of their total covered transactions secured by a first lien in "rural" or "underserved" counties during the preceding calendar year and also meet other small creditor criteria, and do not otherwise maintain escrow accounts for loans serviced by themselves or an affiliate. In light of recent changes to which counties meet the definition of "rural," the Bureau proposed to amend this provision to prevent creditors that qualified for the exemption in 2013 from losing eligibility in 2014 or 2015 because of these changes. The proposal would have allowed creditors to qualify for the exemption if they qualified in any of the previous three calendar years (assuming the other criteria for eligibility are also met). In addition, the proposal would have amended § 1026.35(b)(2)(iii)(D)(*1*) to prevent creditors that were previously ineligible for the exemption, but may now qualify in light of the proposed changes, from losing eligibility because they had established escrow accounts for first-lien higher-priced mortgage loans (for which applications were received after June 1, 2013), as required when the final rule took effect and prior to the proposed amendments taking effect. The Bureau proposed to make this amendment effective for applications received on or after January 1, 2014, because the § 1026.35(b)(2)(iii) exemption applies based on a calendar year and relates to a regulation that is already in effect. The Bureau received no comments addressing the proposed effective date of this provision, other than comments that generally supported the proposal.

As discussed in the section-by-section analysis below, the Bureau is adopting amendments to § 1026.35(b)(2)(iii) as proposed. In addition, the Bureau is adopting amendments to the commentary to this section substantially as proposed with one additional clarification. The Bureau believes it is appropriate to set a January 1, 2014 effective date for these provisions. The Bureau notes that a January 1, 2014 effective date is more beneficial to industry, because the amendment would only expand eligibility for the exemption—thus an effective date of January 1, 2014, as opposed to January 10, 2014, would mean that creditors are able to take advantage of this expanded exemption earlier. Accordingly, the amendments to § 1026.35(b)(2)(iii) and its commentary will apply to applications received on or after January 1, 2014.

C. Provisions Related to the 2013 Loan Originator Compensation Final Rule

The effective date for certain provisions in this final rule related to the 2013 Loan Originator Compensation Final Rule, along with the related provisions of the 2013 Loan Originator Compensation Final Rule, is January 1, 2014, for the reasons discussed below.

V. Effective Date of the 2013 Loan Originator Compensation Rule

A. General

The Proposal

As described in the proposal, the Bureau established January 10, 2014, as the baseline effective date for nearly all of the provisions in the 2013 Title XIV Final Rules, including most provisions of the 2013 Loan Originator Compensation Final Rule. In the proposal, the Bureau stated that it believed that having a consistent effective date across nearly all of the 2013 Title XIV Final Rules would facilitate compliance. However, as explained in the proposal, the Bureau identified a few provisions that it believed did not present significant implementation burdens for industry, including § 1026.36(h) on mandatory arbitration clauses and waivers of certain consumer rights and § 1026.36(i) on financing credit insurance, as adopted by the 2013 Loan Originator Compensation Final Rule. As explained in the proposal, for these provisions (and associated commentary), the Bureau set an earlier effective date of June 1, 2013.[15]

As described in the proposal, since issuing the 2013 Loan Originator Compensation Final Rule in January 2013, the Bureau has received a number of questions about transition issues, particularly with regard to application of provisions under § 1026.36(d) that generally prohibit basing loan originator compensation on transaction terms but permit creditors to award non-

[15] After interpretive issues were raised concerning the credit insurance provision as discussed in the 2013 Loan Originator Compensation Final Rule, the Bureau temporarily delayed and extended the effective date for § 1026.36(i) in the 2013 Effective Date Final Rule until January 10, 2014. 78 FR 32547 (May 31, 2013). In the proposal, the Bureau requested comment on whether the effective date for § 1026.36(i) may be set earlier than January 10, 2014.

deferred profits-based compensation subject to certain limits. For instance, as discussed in the proposal, the Bureau has received inquiries about when creditors and loan originator organizations may begin taking into account transactions for purposes of paying compensation under a non-deferred profits-based compensation plan pursuant to § 1026.36(d)(1)(iv)(B)(*1*) (*i.e.*, the 10-percent total compensation limit, or the 10-percent limit). As the Bureau stated in the proposal, while the profits-based compensation provisions present relatively complicated transition issues, the Bureau is also conscious of the fact that most other provisions in the 2013 Loan Originator Compensation Final Rule are simpler to implement because they largely recodify and clarify existing requirements that were previously adopted by the Federal Reserve Board in 2010 with regard to loan originator compensation, and by various agencies under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. 5106-5116 (SAFE Act), with regard to loan originator qualification requirements. The Bureau also stated in the proposal that these provisions are focused on compensation plan structures, registration and licensing, and hiring and training requirements that are often structured on an annual basis and typically do not vary from transaction to transaction.

For all of these reasons, the Bureau proposed moving the general effective date for most provisions adopted by the 2013 Loan Originator Compensation Final Rule to January 1, 2014. The Bureau stated in the proposal that, although this change would shorten the implementation period by nine days, the Bureau believes that the change would actually facilitate compliance and reduce implementation burden by providing a cleaner transition period that more closely aligns with changes to employers' annual compensation structures and registration, licensing, and training requirements. In addition, the Bureau also stated that, because elements of the 2013 Loan Originator Compensation Final Rule concerning retention of records, definitions, scope, and implementing procedures affect multiple provisions, the Bureau was proposing to make the change with regard to the bulk of the 2013 Loan Originator Compensation Final Rule as described further below, rather than attempting to treat individual provisions in isolation. Finally, the Bureau also proposed changes to the effective date for provisions on financing of credit insurance under § 1026.36(i), in connection with proposing further clarifications and guidance on the Dodd-Frank Act requirements related to that provision.

The Bureau stated in the proposal that it believed these changes would facilitate compliance and help ensure that the 2013 Loan Originator Compensation Final Rule does not have adverse unintended consequences. The Bureau requested public comment on these proposed effective dates, including on any suggested alternatives.

Comments

The Bureau received approximately 30 comments addressing the proposed changes to the effective date for the 2013 Loan Originator Compensation Final Rule other than § 1026.36(i).[16] The comments generally were supportive of these proposed changes. A national association of credit unions and several state credit union associations supported moving up the effective date from January 10, 2014, to January 1, 2014, stating that a January 1 date would result in a cleaner transition period that more closely aligns with changes to employers' annual compensation structures and registration, licensing, and training requirements. A national trade association of banking institutions stated its appreciation for the Bureau's efforts to facilitate compliance and establish effective dates that are better aligned with banker systems. This association wrote that it did not believe a January 1 effective date would constitute a major burden. The association urged the Bureau, however, to enact effective dates that apply to transactions that are *either*

[16] The comments regarding the effective date for § 1026.36(i) are discussed separately below.

consummated on or after January 1, 2014 *or* for which the creditor paid compensation on or after that date. According to the association, allowing for an alternative option would best accommodate the various payment systems and methods that exist across various institutions and would not, in its opinion, give rise to significant difficulties in terms of examinations.[17]

One community bank commented that it would pose unnecessary and wasteful burdens on financial institutions of all sizes to necessitate a separate accounting and reporting for a nine-day period, because accounting periods for compensation generally commence annually each January 1st. A large mortgage company stated that it supported the change because moving the effective date to January 1, 2014, would help lenders update their systems on a consistent basis and avoid any potential lapses in accounting or confusion that could emerge between January 1 and January 10. One community bank stated that it is "operationally efficient" to apply rule changes at the beginning of a month and that there would be no real difference in compliance burden because "most lenders would naturally" comply as of the earlier date anyway. A state association representing banking institutions wrote that moving up the effective date by nine days aligns more closely with payroll records and tax reporting and may actually be easier to implement from an operational basis than a January 10 effective date. This association did report that its members have indicated that they will not be able to meet either a January 1 or a January 10, 2014, effective date due to the 2013 Loan Originator Compensation Final Rule's complexity and pending amendments.

Final Rule

As discussed in more detail below, the Bureau is finalizing the effective dates for § 1026.36 (and interrelated provisions in § 1026.25(c)(2)) adopted by the 2013 Loan Originator

[17] The association stated further that, under this approach, an institution would have to abide by whatever effective date methodology it selects.

Compensation Final Rule (and associated commentary), and the amendments to and additions to those sections contained in today's final rule, as proposed. The Bureau discusses in turn below the effective dates for different provisions of § 1026.36 (and interrelated provisions in § 1026.25(c)(2)). These clarifications and amendments to the effective date require only minimal revisions to the rule text and commentary and primarily are reflected in the Dates caption and discussion of effective dates in this Supplementary Information. As amended by the Dodd-Frank Act, TILA section 105(a), 15 U.S.C. 1604(a), directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. Under Dodd-Frank Act section 1022(b)(1), 15 U.S.C. 5512(b)(1), the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. The Bureau is changing the effective date of the 2013 Loan Originator Compensation Final Rule with respect to those provisions described above pursuant to its TILA section 105(a) and Dodd-Frank Act section 1022(b)(1) authority.

B. Effective Date for Amendments to § 1026.36(d)

The Proposal

The Bureau proposed three specific changes to the effective date for the amendments to § 1026.36(d) (and associated commentary) contained in the 2013 Loan Originator Compensation Final Rule. First, the Bureau proposed that the provisions of the 2013 Loan Originator

Compensation Final Rule revising § 1026.36(d) would be effective January 1, 2014, not January 10, 2014. The Bureau discussed its concern that an effective date of January 10, 2014, for the revisions to § 1026.36(d) may result in creditors and loan originator organizations believing that they have to account separately for the period from January 1 through January 9, 2014, when applying the new compensation restrictions under § 1026.36(d). While recognizing that this proposal would mean that creditors and loan originator organizations would have a slightly shorter implementation period, the Bureau stated that on balance it believed the proposed change would have eased compliance burdens for creditors and loan originator organizations by eliminating any concern about a need for separate accountings as described above. As noted above, the Bureau also proposed to change the effective date for the addition of § 1026.25(c)(2) (records retention) (and associated commentary) from January 10, 2014, to January 1, 2014, to dovetail with the proposal to change the effective date of § 1026.36(d) to January 1, 2014, to ensure that records on compensation paid between January 1 and January 10, 2014, are properly maintained.

Second, the Bureau proposed that the revisions to § 1026.36(d) (other than the addition of § 1026.36(d)(1)(iii), as discussed below) would have applied to transactions that are consummated and for which the creditor or loan originator organization paid compensation on or after January 1, 2014. The Bureau stated its belief that applying the effective date for the revisions to § 1026.36(d) based on application receipt, rather than based on transaction consummation and compensation payment, could present compliance challenges. This proposed change, as the Bureau discussed in the proposal, would have permitted transactions to be taken into account for purposes of compensating individual loan originators under the exceptions set forth in § 1026.36(d)(1)(iv) if the transactions were consummated and compensation was paid to the individual loan originator on or after January 1, 2014, even if the applications for those transactions were received prior to January 1, 2014. The Bureau stated that it believes this clarification, in conjunction with the proposed change to the effective date for the revisions to § 1026.36(d) described above, would have reduced compliance burdens on creditors and loan originator organizations by allowing them to take into account all transactions consummated in 2014 (and for which compensation is paid to individual loan originators in 2014) for purposes of paying compensation under § 1026.36(d)(1)(iv) that is earned in 2014. This proposed revision also would have allowed the consumer-paid compensation restrictions and exceptions thereto in the revisions to § 1026.36(d)(2) to be effective upon the consummation of any transaction where such compensation is paid in 2014 even if the application for that transaction was received in 2013.

Third, the Bureau proposed that the provisions of § 1026.36(d)(1)(iii), which pertain to contributions to or benefits under designated tax-advantaged plans for individual loan originators, would apply to transactions for which the creditor or loan originator organization paid compensation on or after January 1, 2014, regardless of when the transactions were consummated or the applications were received. The Bureau explained in the proposal that these changes regarding the effective date for the revisions to §1026.36(d)(1)(iii) would have more clearly reflected the Bureau's intent to permit payment of compensation related to designated tax-advantaged plans during both 2013 (as explained in CFPB Bulletin 2012-2 clarifying current § 1026.36(d)(1))[18] and thereafter (under the 2013 Loan Originator Compensation Final Rule).

[18] The Bureau explained in the Supplementary Information to the 2013 Loan Originator Compensation Final Rule that it issued CFPB Bulletin 2012-2 (the Bulletin) to address questions regarding the application of § 1026.36(d)(1) to "Qualified Plans" (as defined in the Bulletin). The Bureau noted in that Supplementary Information that until the final rule takes effect, the clarifications in CFPB Bulletin 2012-2 remain in effect. Moreover, as the Bureau stated in

In addition to the three specific changes to the effective date described above, the Bureau solicited comment generally on whether the proposed changes to the effective date for the amendments to § 1026.36(d) are appropriate or whether other approaches should be considered. In particular, the Bureau solicited comment on whether the amendments to § 1026.36(d) should take effect on January 1, 2014, and apply to all payments of compensation made on or after that date, regardless of the date of consummation of the transactions on whose terms the compensation was based.

Comments

Industry commenters generally supported the proposed changes to the effective date for the amendments to § 1026.36(d) that were added by the 2013 Loan Originator Compensation Final Rule. There were no objections to the Bureau's proposal to delete application receipt as the triggering event for the effective date provisions of § 1026.36 (other than for § 1026.36(g)). One state trade association of banking institutions wrote that applying the effective date for revisions to § 1026.36(d) based on receipt of applications would create "serious compliance and recordkeeping challenges." Moreover, industry commenters generally supported the shift of the effective date for the amendments of § 1026.36(d) from January 10 to January 1, 2014 (see discussion above with regard to the general comments the Bureau received on the changes to the effective dates for the 2013 Loan Originator Compensation Final Rule). Industry commenters also did not raise any objections to the proposed revisions to the effective date for § 1026.36(d)(1)(iii), which would have applied to transactions for which compensation is paid on or after January 1, 2014, without regard to when the transactions were consummated. Nor did

the proposal, the Bureau interprets "Qualified Plan" as used in the Bulletin to include the designated tax-advantaged plans described in the final rule.

industry commenters specifically object to the proposal to change the effective date for the addition of § 1026.25(c)(2) (records retention) from January 10, 2014, to January 1, 2014.

Several commenters expressly supported the Bureau's proposal to apply the effective date for the amendments to § 1026.36(d) (other than the addition of § 1026.36(d)(1)(iii)) to transactions consummated on or after January 1, 2014, *and* where compensation was paid on or after January 1, 2014. A large depository institution wrote that this approach to the effective date would be a "welcome clarification." One industry commenter that specializes in the financing of manufactured housing, in expressing support for proposed changes to the effective date, objected to the alternative on which the Bureau solicited comment (*i.e.*, that the effective date would apply to compensation paid on or after January 1, 2014, regardless of the date of consummation of the transaction).[19]

A small number of industry commenters asked that the Bureau provide more flexibility as to the effective date for the amendments to § 1026.36(d). As noted above, one national trade association asked that the effective dates for the various provisions of the 2013 Loan Originator Compensation Final Rule be triggered *either* by the consummation of transactions on or after January 1, 2014, *or* by the payment of compensation on or after January 1, 2014, with the complying parties having the option of selecting the applicable triggering event. A state association representing banking institutions similarly asked for an "either/or" approach with regard to the proposed trigger for the effective date. A state association representing banking institutions stated that the proposed formula for the effective date (*i.e.*, considering both the

[19] This commenter noted its agreement with the Bureau's statement in the proposal that such an approach could raise complexity about how the new rule would apply to payments under non-deferred profits-based compensation plans made on or after January 1, 2014, where the compensation payments were based on the terms of transactions consummated in 2013. This commenter wrote that such an approach would adversely affect, without fair warning, those creditors and their employees for whom 2013 compensation plans were made in mid-2012.

consummation date and the payment date) was unnecessarily complex, and instead recommended that the effective date be tied solely to the payment date. A national trade association of mortgage banking institutions and a mortgage company recommended that the Bureau adopt January 1, 2014, as an optional effective date, with mandatory implementation as of January 10, 2014. The association reasoned that while the earlier effective date may benefit many lenders, there may be some lenders that have already arranged compliance for the later date and would be forced to incur additional expense if compliance were required earlier. The mortgage company stated this change might assist in a small way in regards to payroll systems.

Final Rule

The Bureau is finalizing the effective date and applicability for the amendments to §§ 1026.36(d) and 1026.25(c)(2) (and associated commentary) adopted by the 2013 Loan Originator Compensation Final Rule and the proposed amendments and additions thereto in the June 2013 proposal, as proposed. That is: (1) the amendments to § 1026.36(d) (other than the addition of § 1026.36(d)(1)(iii)) and the provisions of § 1026.25(c)(2) will apply to transactions that are consummated and for which the creditor or loan originator organization paid compensation on or after January 1, 2014; and (2) the provisions of § 1026.36(d)(1)(iii) will apply to transactions for which the creditor or loan originator organization paid compensation on or after January 1, 2014, regardless of when the transactions were consummated or their applications were received. For the reasons stated in the proposal and supported by many of the commenters, the Bureau believes that a January 1, 2014, effective date will ease compliance burden by aligning the effective date for the amendments to § 1026.36(d) with the date on which annual changes to compensation policies are implemented. Moreover, the Bureau believes that tying the application of the effective date for the amendments to §1026.36(d) (other than the addition of §§ 1026.36(d)(1)(iii) and 1026.25(c)(2)) to conjunctive triggering events on or after January 1, 2014 (*i.e.*, the consummation of transactions *and* the payment of compensation based on the terms of those transactions) best facilitates a smooth transition from one set of compensation rules to another. The Bureau thus disagrees with the commenters that asked for an "either/or" approach (*i.e.*, tied to either the consummation date or the payment date) or for the effective date to be tied only to payment of compensation. A rule where the complying party has the option of choosing among two possible triggering events potentially would create confusion for complying parties and examiners about whether compensation earned in 2013 but paid in 2014 is subject to the current compensation rules under § 1026.36(d) or the amendments to § 1026.36(d) added by the 2013 Loan Originator Compensation Final Rule, and as to whether the amended recordkeeping requirements in § 1026.25(c)(2) would apply. Moreover, as one commenter suggested, permitting creditors and loan originator organizations to pay, in 2014, compensation earned in 2013—at which time the current compensation rules were still in effect—might disadvantage creditors or loan originator organizations that relied on the current rules in setting up their 2013 compensation programs in 2012.

The Bureau also believes that providing for an optional compliance date of January 1, 2014—as suggested by a small number of industry commenters—would add complexity which would likely outweigh the benefits of the flexibility that some complying parties might gain from this approach. The Bureau is concerned that this approach to the effective date would lead to unnecessary dispersion of compliance dates over a ten-day period in early 2014, which in turn would be difficult to track by examiners and enforcing parties, and potentially raise other legal and operational questions. It could potentially lead to gaps in recordkeeping as well. Even further confusion could result due to the continued effect of the current compensation rules for an additional nine-day period. The Bureau also notes that the weight of comments it received on the proposed effective date changes supported a mandatory compliance date of January 1, 2014.

C. Effective Dates for Amendments to or Additions of § 1026.36(a), (b), (e), (f), (g), and (j)

The Proposal

Rather than implementing the proposed change in effective dates for §1026.36(d) in isolation, the Bureau also proposed to make the amendments to or additions of (as applicable) § 1026.36(a) (definitions), § 1026.36(b) (scope), § 1026.36(e) (anti-steering), § 1026.36(f) (qualifications) and § 1026.36(j) (compliance policies and procedures for depository institutions) (and associated commentary) contained in the 2013 Loan Originator Compensation Final Rule take effect on January 1, 2014. The Bureau proposed not to tie the effective date to the receipt of a particular loan application, but rather to a date certain. Because these provisions rely on a common set of definitions and in some cases cross-reference each other,[20] the Bureau proposed to make them effective on January 1, 2014, and without reference to receipt of applications to avoid a potential incongruity among the effective dates of the substantive provisions and the effective dates of the regulatory definitions and scope provisions supporting those substantive provisions. In the proposal, the Bureau stated that it believes this proposed approach would facilitate compliance.

The Bureau did not, however, propose to adjust the effective date for § 1026.36(g) (and associated commentary), which requires that loan originators' names and identifier numbers be provided on certain loan documentation, except to clarify and confirm that the provision takes effect with regard to any application received on or after January 10, 2014, by a creditor or a loan originator organization. Because this provision requires modifications to documentation for

[20] For example, § 1026.36(j) requires that depository institutions establish written policies and procedures reasonably designed to ensure and monitor compliance with § 1026.36(d), (e), (f), and (g).

individual loans and the systems that generate such documentation, the Bureau stated in the proposal that it believes it is appropriate to have this provision take effect with the other 2013 Title XIV Final Rules that affect individual loan processing.

Comments

As noted above, the commenters that addressed the proposed changes to the effective dates for the provisions of the 2013 Loan Originator Compensation Final Rule generally expressed support for the proposed changes. In nearly all cases, these comments did not discuss the application of the effective date to specific provisions within § 1026.36, other than the amendments to § 1026.36(d). One national trade association that requested an optional compliance date of January 1, 2014, for the amendments to § 1026.36(d) noted that, if the Bureau were to adopt a mandatory compliance date of January 1, 2014, it nonetheless agreed with the proposal to keep the effective date for the provisions of § 1026.36(g) as January 10, 2014. The association stated that systems changes to revise loan documents scheduled to take effect on January 10 should not be made costlier or less convenient as a result of the Bureau's changes to the effective date provisions.

Final Rule

The Bureau is finalizing the effective date for the amendments to or additions of § 1026.36(a), (b), (e), (f), (g), and (j) (and associated commentary) contained in the 2013 Loan Originator Compensation Final Rule and the proposed amendments and additions thereto in the June 2013 proposal, as proposed. Therefore: (1) the effective date for the amendments to or additions of § 1026.36(a), (b), (e), (f), and (j) as finalized in this rule will be January 1, 2014 (*i.e.*, a date certain that is not tied to a triggering event, such as receipt of an application on or after that date); and (2) the effective date for the addition of § 1026.36(g) will be January 10, 2014, and that section therefore will apply to all transactions for which the creditor or loan originator organization received an application on or after that date.[21]

While the Bureau is not changing the effective date for § 1026.36(g), it has become aware that some uncertainty exists with respect to the application of this provision where more than one loan originator organization is involved in originating the same transaction (*e.g.*, a mortgage broker and a creditor performing origination services with respect to the same transaction). The Bureau understands that some loan originator organizations are planning to comply by including the name and Nationwide Mortgage Licensing System and Registry (NMLSR) ID (where the NMLSR has provided one) for *multiple* loan originator organizations involved in originating the transaction on the loan documents, while others are planning to comply by including the name and NMLSR ID (where the NMLSR has provided one) for just *one* of the loan originator organizations involved in originating the transaction on the loan documents. The Bureau believes that either approach complies with the rule in its current form. However, the Bureau is considering proposing to clarify at some point in the future that the name and NMLSR ID (where the NMLSR has provided one) for *multiple* loan originator organizations involved in originating the transaction must be included on the loan documents. If the Bureau ultimately adopts such a clarification, it will provide adequate time for compliance.

D. Effective Date for § 1026.36(i)

As discussed in the 2013 Effective Date Final Rule and below, the Bureau initially adopted a June 1, 2013 effective date for § 1026.36(i), but later delayed the provision's effective date to January 10, 2014, while the Bureau considered addressing interpretive questions

[21] While a depository institution must have its policies and procedures under § 1026.36(j) in place by January 1, 2014, including policies and procedures covering §1026.36(g), the depository institution is, of course, not required to ensure and monitor compliance with § 1026.36(g) until January 10, 2014, the effective date of § 1026.36(g).

concerning the provision's applicability to transactions other than those in which a lump-sum premium is added to the loan amount at consummation. The Bureau sought comment on whether the January 10, 2014 effective date would be appropriate in light of the proposed changes, or whether an earlier effective date could be set that permits sufficient time for creditors to adjust their insurance premium practices as necessary. The Bureau received comments from trade associations, the credit insurance industry, credit unions and other financial institutions, as well as consumer groups, which addressed the proposed effective date. Industry commenters and trade associations strongly preferred the January 10th date to an earlier date, and stated that system adjustments will be required to implement the final rule. However, these commenters generally supported the January 10, 2014 effective date as reasonable, so long as the final rule does not materially differ from the proposal. Consumer groups suggested that the Bureau set the effective date at January 1, 2014, noting that the consumer benefit derived from the provision has already been delayed from its original effective date of June 1, 2013.

As discussed in the section-by-section analysis below, the Bureau is adopting amendments to § 1026.36(i) substantially as proposed, with some additional clarifications. The Bureau believes that creditors will need time to adjust certain credit insurance premium billing practices to account for the final rule, but believes that the January 10, 2014 effective date adopted in the 2013 Effective Date Final Rule will allow sufficient time for compliance. This approach is consistent with comments from industry and trade associations, as well as the generally applicable effective date for the 2013 Title XIV Final Rules, including for several provisions the Bureau is amending through this notice.

VI. Section-by-Section Analysis

A. Regulation B

Section 1002.14 Rules on Providing Appraisals and Other Valuations

14(b) Definitions

14(b)(3) Valuation

The Proposal

The Bureau proposed to amend commentary to § 1002.14 to clarify the definition of "valuation" as adopted by the 2013 ECOA Final Rule. As the Bureau stated in the proposal, the Dodd-Frank Act section 1474 amended ECOA by, among other things, defining "valuation" to include any *estimate* of the value of the dwelling developed in connection with a creditor's decisions to provide credit. *See* ECOA section 701(e)(6). Similarly, the 2013 ECOA Final Rule adopted § 1002.14(b)(3), which defines "valuation" as any *estimate* of the value of a dwelling developed in connection with an application for credit. Consistent with these provisions, the Bureau intended the term "valuation" to refer only to an estimate for purposes of the 2013 ECOA Final Rule's newly adopted provisions. However, the 2013 ECOA Final Rule added two comments that refer to a valuation as an appraiser's estimate or opinion of the value of the property: comment 14(b)(3)-1.i, which gives examples of "valuations," as defined by § 1002.14(b)(3); and comment 14(b)(3)-3.v, which provides examples of documents that discuss or restate a valuation of an applicant's property but nevertheless do not constitute "valuations" under § 1002.14(b)(3).

Because the Bureau did not intend by these two comments to alter the meaning of "valuation" to become inconsistent with ECOA section 701(e)(6) and § 1002.14(b)(3), the Bureau proposed to clarify comments 14(b)(3)-1.i and 14(b)(3)-3.v by removing the words "or opinion" from their texts, and sought comment on the clarification.

Comments

The Bureau received a few comments from trade associations and credit unions that generally supported the clarification. The Bureau also received one comment from a trade association that suggested the proposed change could cause additional confusion, because the term “opinion of value” is commonly used to describe appraisals. This commenter also pointed out that appraisals are generally not considered to be “estimates,” and thus the application of the rule to appraisals could be confusing in light of the proposed change. The commenter suggested that, rather than deleting the word “opinion” altogether, the Bureau instead clarify that a valuation includes any “estimate or opinion of value.”

Final Rule

The Bureau is adopting comment 14(b)(3)-1.i as proposed with some additional modifications, and also is adding new comment 14(b)(3)-3.vi based on the trade association comment. In proposing these amendments, the Bureau intended to clarify that the comments referred to appraisals or other valuation models by removing the word “opinion,” which could be read broadly to include even speculative opinions not based on an appraisal or other valuation model. However, in light of the trade association’s comments the Bureau believes that simply deleting the word “opinion” could also cause confusion regarding whether and how the rule applies to appraisals that are commonly described as “opinions of value.” Thus, the Bureau is substituting “opinion of value” for “opinion” rather than deleting the word entirely. The Bureau is adopting revised comment 14(b)(3)-1.i with this change. The Bureau is adopting comment 14(b)(3)-3.v as proposed, and does not believe any additional revisions are necessary in light of this clarification, because the comment deals exclusively with reports reflecting property inspections and not appraisals. However, the Bureau is adding new comment 14(b)(3)-3.vi to clarify that appraisal reviews that do not provide an estimate of value or “opinion of value” are included in the list of examples of items that are not considered “valuations” for purposes of § 1002.14(b)(3).

B. Regulation X

General—Technical Corrections

In addition to the clarifications and amendments to Regulation X discussed below, the Bureau proposed technical corrections and minor wording adjustments for the purpose of clarity throughout Regulation X that were not substantive in nature. No comments were received on these changes, and the Bureau is finalizing such technical and wording clarifications to regulatory text in §§ 1024.30, 1024.39, and 1024.41; and to commentary to §§ 1024.17, 1024.33 and 1024.41.

Sections 1024.35 and .36, Error Resolution Procedures and Requests for Information

The Bureau proposed minor amendments to the error resolution and request for information provisions of Regulation X, adopted by the 2013 Mortgage Servicing Final Rules. In the areas in which amendments were proposed, the error resolution procedures largely parallel the information request procedures; thus the two sections are discussed together below. Section 1024.35 implements section 6(k)(1)(C) of RESPA, as amended by the Dodd-Frank Act, and § 1024.36 implements section 6(k)(1)(D) of RESPA, as amended by the Dodd-Frank Act. To the extent the requirements under §§ 1024.35 and 1024.36 are applicable to qualified written requests, these provisions also implement sections 6(e) and 6(k)(1)(B) of RESPA. As discussed in part III (Legal Authority), the Bureau is finalizing these amendments pursuant to its authority under RESPA sections 6(j), 6(k)(1)(E) and 19(a). As explained in more detail below, the Bureau believes these provisions are necessary and appropriate to achieve the consumer protection purposes of RESPA, including ensuring responsiveness to consumer requests and complaints and the provision and maintenance of accurate and relevant information.

35(c) and 36(b), Contact Information for Borrowers to Assert Errors and Information Requests

The Proposal

The Bureau proposed to amend the commentary to § 1024.35(c) and § 1024.36(b) with respect to disclosure of the exclusive address (a servicer may designate an exclusive address for the receipt of notifications of errors and requests for information) when a servicer discloses contact information to the borrower for the purpose of assistance from the servicer.

Section 1024.35(c), as adopted by the 2013 Mortgage Servicing Final Rules, state that a servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit a notice of error to a servicer in accordance with the procedures set forth in § 1024.35. Comment 35(c)-2 clarifies that, if a servicer establishes any such exclusive address, the servicer must provide that address to the borrower in any communication in which the servicer provides the borrower with contact information for assistance from the servicer. Similarly, § 1024.36(b) states that a servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit information requests to a servicer in accordance with the procedures set forth in § 1024.36. Comment 36(b)-2 clarifies that, if a servicer establishes any such exclusive address, the servicer must provide that address to the borrower in any communication in which the servicer provides the borrower with contact information for assistance from the servicer.

In the proposal, the Bureau expressed concern that comments 35(c)-2 and 36(b)-2 could be interpreted more broadly than the Bureau had intended. Section 1024.35(c) and comment 35(c)-2, as well as § 1024.36(b) and comment 36(b)-2, are intended to ensure that servicers inform borrowers of the correct address for the borrower to use for purposes of submitting notices of error or information requests, so that borrowers do not inadvertently send these communications to other non-designated servicer addresses (which would not provide the protections afforded by §§ 1024.35 and 1024.36, respectively). If interpreted literally, the existing comments would require the servicer to include the designated address for notices of error and requests for information when *any* contact information, even just a phone number or web address, for the servicer is given to the borrower. The Bureau did not intend that the servicer be required to inform the borrower of the designated address in all communications with borrowers where any contact information whatsoever for the servicer is provided.

Accordingly, the Bureau proposed to amend comment 35(c)-2 to provide that, if a servicer establishes a designated error resolution address, the servicer must provide that address to a borrower in any communication in which the servicer provides the borrower with an *address* for assistance from the servicer. Similarly, the Bureau proposed to amend comment 36(b)-2 to provide that, if a servicer establishes a designated information request address, the servicer must provide that address to a borrower in any communication in which the servicer provides the borrower with an *address* for assistance from the servicer.

Comments

The Bureau received comments from industry as well as consumer groups addressing these proposed clarifications. Industry commenters supported limiting the locations where the designated address is required, but asserted that the requirement was still overbroad and unclear as to when the designated address must be provided. These commenters expressed concern that they would have to provide the designated address on every letter that included a return address or an address in the letterhead. The commenters also stated this would be unduly burdensome as it would require significant programming costs. Commenters further stated this would create problems for borrowers by causing cluttered, confusing documents leading borrowers to incorrectly send other things to the designated address (*e.g.*, a borrower may send a payment to the designated address, leading to a delay in payment processing). Finally, commenters stated the proposed clarification could create conflicts with other regulations, such as the force-placed insurance letters, which include an address but do not allow additional information to be included. Industry commenters generally suggested the designated address be required only in a specific subset of contexts: the initial designation letter, the periodic statements and coupon book, the servicer's website, and loss mitigation documents.

Consumer group commenters expressed concern that borrowers will not be informed of their rights. Such commenters objected to a decision the Bureau made, in the 2013 Mortgage Servicing Final Rules, to eliminate the requirement that a servicer receiving a transferred loan include information on the error resolution procedures in its notice to the borrower about the transfer. Such commenters suggested that information on the error resolution and information request rights should be included on each periodic statement.

Final Rule

The Bureau is adopting revised versions of proposed comments 35(c)-2 and 36(b)-2. The Bureau notes that the proposal only addressed when the designated address must be provided, and that comments about providing borrowers information about the general procedures to submit error notifications or information requests are beyond the scope of the proposed changes to the rule.

The Bureau is persuaded that the proposed language of "an address for assistance" might not have fully addressed the concerns of the provision being overbroad, as the proposed language could have been interpreted to require the designated address on every document from the servicer that contains a return address. The Bureau is further persuaded by the concern that borrowers could have been confused and incorrectly sent items that did not concern error resolution to the designated address. To require the designated address on every piece of written communication that includes a return address would be unduly burdensome and not in the best interests of the borrower. Thus, under the final rule, the designated address need be included in only a specific subset of contexts, specifically (1) the written notice, required by § 1024.35(c) and § 1024.36(b) if a servicer designates an exclusive address; (2) any periodic statement or coupon book required pursuant to 12 CFR 1026.41; (3) any website maintained by the servicer in connection with the servicing of the loan; and (4) any notice required pursuant to §§ 1024.39 or 1026.41 that includes contact information for assistance.

While servicers will not specifically be required to provide the designated address in contexts other than those described in the amended comments, the Bureau notes that a servicer remains subject to the requirement in § 1026.38(b)(5) to have policies and procedures reasonably designed to ensure that the servicer informs the borrower of the procedures for submitting written notices of error and information requests. Further, as discussed below in the section-by-section analysis of section 38(b)(5), the Bureau is adopting new comment 38(b)(5)-3 clarifying a servicer's obligation to ensure borrowers are informed of the designated address. The Bureau believes this the final rule will best balance practical considerations with the need to notify borrowers of the designated address.

35(g) and 36(f) Requirements Not Applicable

35(g)(1)(iii)(B) and 36(f)(1)(v)(B)

The Proposal

The Bureau proposed amendments to § 1024.35(g)(1)(iii)(B) (untimely notices of error) and § 1024.36(f)(1)(v)(B) (untimely requests for information). Section 1024.35(g)(1)(iii)(B) provides that a notice of error is untimely if it is delivered to the servicer more than one year after a mortgage loan balance was paid in full. Similarly, current § 1024.36(f)(1)(v)(B) provides that an information request is untimely if it is delivered to the servicer more than one year after a mortgage loan balance was paid in full.

The Bureau proposed to replace the references to "the date a mortgage loan balance is paid in full" with "the date the mortgage loan is discharged." The proposal noted that this change would address circumstances in which a loan is terminated without being paid in full, such as a loan that was discharged through foreclosure or deed in lieu of foreclosure without full satisfaction of the underlying contractual obligation. Further, the proposal stated that this change also would align more closely with § 1024.38(c)(1), which requires a servicer to retain records that document actions taken with respect to a borrower's mortgage loan account only until one year after the date a mortgage loan is "discharged."

Comments

The Bureau received comments from industry as well as consumer groups addressing the proposed modifications. Commenters were generally supportive of changing the rule to address situations when the loan is not paid in full, but expressed concerns about the use of the word "discharged," stating that this word has a specific meaning in bankruptcy and that there may be some ambiguity as to when a loan is discharged in certain situations. In particular, commenters discussed the foreclosure process, as well as situations in which there is a deficiency balance after a foreclosure sale, and situations in which bankruptcy proceedings may eliminate the debt but leave a lien on the property.

Final Rule

The Bureau is adopting § 1024.35(g)(1)(iii)(B) and § 1024.36(f)(1)(v)(B) as proposed. The Bureau believes the requirement to resolve errors and respond to information requests should last over the same timeframe as the obligation to retain records. The Bureau believes it would be impractical to require a servicer to resolve errors and provide information at a time when Regulation X no longer requires the servicer to retain the relevant records. Conversely, the Bureau believes the servicer should be responsible to correct those records during the period when Regulation X does require a servicer to retain records, if necessary, and provide borrowers information from the records. Further, the Bureau believes the use of the term "discharged" is appropriate, especially given that the term is already used in the timing of the record-retention requirement. For purposes of the Bureau's mortgage servicing rules, as opposed to bankruptcy purposes, a mortgage loan is discharged when both the debt and all corresponding liens have been extinguished or released, as applicable. The Bureau believes a borrower should have the benefit of the error resolution, information request, and record retention provisions so long as a debt *or* lien remains because only after both have been eliminated will there be no further possibility of a borrower needing to seek servicing information or to assert a servicing error. Thus, the Bureau is finalizing this provision as proposed.

Section 1024.38 General Servicing Policies, Procedures and Requirements

38(b) Objectives

38(b)(5) Informing Borrowers of the Written Error Resolution and Information Request Procedures

As discussed above in the section-by-section discussion of §§ 1024.35(c) and 1024.36(b), the Bureau is amending comments 35(c)-2 and 36(b)-2 to clarify in what contexts the designated address for notices of error or requests for information must be provided. The finalized comments clarify that, if a servicer designates such an address, that address must be provided in any notice required pursuant to §§ 1024.39 or 1024.41 that includes contact information for assistance. The Bureau notes that servicers may provide borrowers in delinquency with different addresses for different purposes. For example, a servicer may provide a borrower with the designated address for asserting errors, and a separate address for submission of loss mitigation applications. To mitigate the risk of a borrower sending a notification of error to the wrong address (and thus not triggering the associated protections), the Bureau is adopting new comment 38(b)(5)-3.

Section 1024.35 sets out certain procedures a servicer must follow when a borrower submits a written notice of error. These procedures provide important protections to borrowers who in are in delinquency (as well as at other times). Specifically, the procedures in § 1024.35(e)(3)(i)(B) require a servicer to take certain actions before a scheduled foreclosure sale if a borrower asserts certain errors.[22] These protections are only triggered if a borrower submits a written notice of error to the designated address (assuming the servicer has designated such an address). Thus, the Bureau believes it is important that borrowers asserting errors send the notice of error to the proper address.

The Bureau notes that existing provisions do address ensuring the borrower is aware of the procedures required to trigger the error resolution protections. Section 1024.38(b)(5) requires a servicer to have policies and procedures reasonably designed to achieve the objective

[22] Section 1024.35(e)(3)(i)(B) requires that, if a borrower asserts an error related to a servicer making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process in violation of § 1024.41(f) or (j), or related to a servicer moving for foreclosure judgment or order of sale or conducting a foreclosure sale in violation of § 1024.41(g) or (j), the servicer must comply with the requirements of the error resolution procedures prior to the date of a foreclosure sale, or within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error, whichever is earlier.

of informing borrowers of the written error resolution and information request procedures. The Bureau acknowledges that a borrower in delinquency who is working with a continuity of contact representative and submitting documents related to loss mitigation may be confused about where to submit notices asserting errors. If such a borrower were to orally report the assertion of the error to the continuity of contact representative, comment 38(b)(5)-2 explains that § 1024.38(b)(s) would require servicers to have policies and procedures reasonably designed to notify a borrower who is not satisfied with the resolution of the complaint of the procedures for submitting a written notice of error. However, the Bureau is concerned that, if borrowers were to submit written assertions of an error to the addresses where they were submitting loss mitigation documents, such borrowers may believe they have properly followed the procedures, but in fact would not have triggered the protections under § 1024.35.

To address this concern, in connection with the clarification above on the contexts in which the designated address must be provided, the Bureau is adopting new comment 38(b)(5)-3. The new comment clarifies a servicer's obligation pursuant to § 1024.38(b)(5) by stating that a servicer's policies and procedures must be reasonably designed to ensure that if a borrower submits a notice of error to an incorrect address that was given to the borrower in connection with submission of a loss mitigation application or the continuity of contact pursuant to § 1024.40, the servicer will ensure the borrower is informed of the procedures for submitting written notices of error set forth in § 1024.35, including the correct address. Alternatively, the servicer could redirect notices of error that were sent to an incorrect address to the designated address established pursuant to § 1024.35(c).

Section 1024.41 Loss Mitigation Procedures

As discussed above in part III (Legal Authority), the Bureau is finalizing amendments to § 1024.41 pursuant to its authority under sections 6(j)(3), 6(k)(1)(E), and 19(a) of RESPA. The Bureau believes that these amendments are necessary and appropriate to achieve the consumer protection purposes of RESPA and in particular of section 6 of RESPA, including to facilitate the evaluation of borrowers for foreclosure avoidance options. Further, the amendments implement, in part, section 6(k)(1)(C) of RESPA, which obligates a servicer to take timely action to correct errors relating to avoiding foreclosure, by establishing servicer duties and procedures that must be followed where appropriate to avoid such errors. In addition, the Bureau relies on its authority pursuant to section 1022(b) of the Dodd-Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial law, including the purpose and objectives under sections 1021(a) and (b) of the Dodd-Frank Act. The Bureau additionally relies on its authority under section 1032(a) of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the terms of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

41(b) Receipt of a Loss Mitigation Application

41(b)(1) Complete Loss Mitigation Application

In connection with the provisions addressing payment forbearance discussed below in the section-by-section analysis of 1024.41(c)(2)(iii), the Bureau is amending comment 41(b)(1)-4 to clarify the obligation of a servicer to use reasonable diligence to complete a loss mitigation application. See the discussion below.

41(b)(2) Review of Loss Mitigation Application Submission

41(b)(2)(i) Requirements

The Proposal

The Bureau proposed to amend the commentary to § 1024.41(b)(2)(i) to clarify servicers' obligations with respect to providing notices to borrowers regarding the review of loss mitigation applications. Section 1024.41(b)(2)(i) requires a servicer that receives a loss mitigation application 45 days or more before a foreclosure sale to review and evaluate the application promptly and determine, based on that review, whether the application is complete or incomplete.[23] The servicer then must notify the borrower within five days (excluding legal public holidays, Saturdays and Sundays) that the servicer acknowledges receipt of the application, and that the servicer has determined that the loss mitigation application is either complete or incomplete. If an application is incomplete, the notice must state the additional documents and information that the borrower must submit to make the loss mitigation application complete. In addition, servicers are obligated under § 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information necessary to complete an incomplete application, which may require, when appropriate, the servicer to contact the borrower and request such information as illustrated in comment 41(b)(1)-4.i.

Following publication of the 2013 Mortgage Servicing Final Rules, the Bureau received numerous inquiries from industry stakeholders requesting guidance or clarification regarding how this provision may apply in instances where a servicer determines that additional information from the borrower is needed to complete an evaluation of a loss mitigation

[23] A "complete loss mitigation application" is defined in § 1024.41(b)(1) as "an application in connection with which a servicer has received all the information the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower."

application after either (1) the servicer has provided notice to the borrower informing the borrower that the loss mitigation application is complete, or (2) the servicer has provided notice to the borrower identifying other specific information or documentation necessary to complete the application and the borrower has furnished that documentation or information. As these stakeholders noted, servicers sometimes must collect additional information from borrowers, the need for which may not have been apparent at the point of initial application, in order to process the application and satisfy the applicable investor requirements. In these situations, a borrower may have submitted the documents and information identified in the initial notice, resulting in an application that is facially complete based on the servicer's initial review, but the servicer, upon further evaluation, determines that additional information is required to evaluate the borrower for a loss mitigation option pursuant to requirements imposed by an investor or guarantor of a mortgage.

The Bureau proposed additional commentary to address these concerns. As the Bureau explained in the June 2013 Proposal, the notice required by § 1024.41(b)(2)(i)(B) is intended to provide the borrower with timely notification that a loss mitigation application was received and either is considered complete by the servicer or is considered incomplete and that the borrower is required to take further action for the servicer to evaluate the loss mitigation application. The Bureau was conscious of concerns that servicers have unnecessarily prolonged loss mitigation processes by incomplete and inadequate document reviews that lead to repeated requests for supplemental information that reasonably could have been requested initially, and so the Bureau designed the rule to ensure an adequate up-front review. At the same time, the Bureau did not believe it would be in the best interest of borrowers or servicers to create a system that leads to borrower applications being denied solely because they contain inadequate information and the servicer believes it may not request the additional information needed.

The Bureau therefore proposed three provisions to address these concerns. First, the Bureau proposed new comment 41(b)(2)(i)(B)-1, which would have clarified that, notwithstanding that a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), a servicer must request additional information from a borrower if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information is required.

Second, the Bureau proposed new comment 41(b)(2)(i)(B)-2, which would have clarified that, except as provided in § 1024.41(c)(2)(iv) (the Bureau’s third proposed new provision, discussed below), the protections triggered by a complete loss mitigation application in § 1024.41 would not be triggered by an incomplete application. An application would have been considered complete only when a servicer has received all the information the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower, even if an inaccurate § 1024.41(b)(2)(i)(B) notice had been sent to the borrower. The Bureau noted that the proposed clarifications would not have allowed servicers deliberately to inform borrowers that incomplete applications are complete or to describe the information necessary to complete an application as something less than all of the necessary information. Servicers are required under § 1024.41(b)(2)(i)(A) to review a loss mitigation application to determine whether it is complete or incomplete. In addition, servicers are subject to the § 1024.38(b)(2)(iv) requirement to have policies and procedures reasonably designed to achieve the objectives of identifying documents and information that a borrower is required to submit to complete an otherwise incomplete loss mitigation application, and servicers are obligated under § 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information necessary to complete an incomplete application. Thus, the proposed clarifications were intended to address situations where servicers make bona fide mistakes in initially evaluating loss mitigation applications.

Third, as described more fully below, the Bureau proposed new § 1024.41(c)(2)(iv) to require that, if a servicer creates a reasonable expectation that a loss mitigation application is complete, but later discovers information is missing, the servicer must treat the application as complete for certain purposes until the borrower has been given a reasonable opportunity to complete the loss mitigation application. The Bureau believed the proposed rule would mitigate potential risks to consumers that could arise through a loss mitigation process prolonged by incomplete and inadequate document reviews and repeated requests for supplemental information. The Bureau believed these new provisions would provide a mechanism for servicers to correct bona fide mistakes in conducting up-front reviews of loss mitigation applications for completeness, while ensuring that borrowers do not lose the protections under the rule due to such mistakes and that servicers have incentives to conduct rigorous up-front review of loss mitigation applications.

Comments

The Bureau received comments from industry as well as consumer groups addressing the proposed provisions addressing a facially complete application. Commenters were generally supportive of the Bureau addressing situations where a servicer later discovers additional information is required to evaluate an application that is complete according to the terms of the notice the servicer sent the borrower. Commenters generally agreed that a strict rule that prevents servicers from seeking additional information when needed would result in unnecessary denials of loss mitigation to the borrower and that encouraging communication from the servicer to the borrower will improve loss mitigation procedures for the borrower. However, some commenters expressed the view that the 2013 Mortgage Servicing Final Rules were sufficient in this regard and that revisions at a date so close to implementation are counterproductive to institutions trying to implement the rule.

Final Rule

As discussed further below in connection with § 1024.41(c)(2)(iv), the Bureau is adopting amendments that achieve largely the same effect as the proposal in addressing situations where a servicer requires additional information to review a facially complete loss mitigation application. The Bureau believes, as it suggested in the proposal, that there is little value in requiring a servicer to evaluate a loss mitigation application when the servicer has determined certain items of information are missing. The Bureau is therefore adopting comment 41(b)(2)(i)(B)-1, which clarifies that if, a servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information is required, the servicer must promptly request the additional information from the borrower. The comment also references § 1024.41(c)(2)(iv), a new provision that sets forth requirements and procedures for a servicer to follow in the event that a facially complete application is later found by the servicer to require additional information or documentation to be evaluated. See the discussion of § 1024.41(c)(2)(iv) in the section-by-section analysis below.

The Bureau is not adopting proposed comment 41(b)(2)(i)(B)-2, which would have provided that protections triggered by a “complete” loss mitigation application would not be triggered by a facially complete application—*i.e.*, where the servicer informs the borrower that the application is complete, or the borrower provides all the documents and information specified by the servicer in the § 1024.41(b)(2)(i)(B) notice as needed to render the application complete. The Bureau continues to believe that certain protections must be provided to borrowers who have submitted all the missing documents and information requested in the 1026.41(b)(2)(i)(B) notice, even if a servicer later determines additional information is necessary. However, the Bureau has been persuaded by commenters that argued a borrower who submits all the documents requested in the § 1024.41(b)(2)(i)(B) notice (if any) should receive the protection the rule affords to borrowers at the time the borrower submits those documents. In accordance with this approach, proposed comment 41(b)(2)(i)(B)-2 has not been finalized.

41(b)(2)(ii) Time Period Disclosure

The Proposal

The Bureau proposed to amend the § 1024.41(b)(2)(ii) time period disclosure requirement, which requires a servicer to provide a date by which a borrower should submit any missing documents and information necessary to make a loss mitigation application complete. Section 1024.41(b)(2)(ii) requires a servicer to provide in the notice required pursuant to § 1024.41(b)(2)(i)(B) the earliest remaining of four specific dates set forth in § 1024.41(b)(2)(ii). The four dates set forth in § 1024.41(b)(2)(ii) are: (1) the date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower; (2) the date that is the 120th day of the borrower's delinquency; (3) the date that is 90 days before a foreclosure sale; and (4) the date that is 38 days before a foreclosure sale.

In general, many of the protections afforded to a borrower by § 1024.41 are dependent on a borrower submitting a complete loss mitigation application a certain amount of time before a foreclosure sale. The later a borrower submits a complete application, and the closer in time to a foreclosure sale, the fewer protections the borrower receives under § 1024.41. It is therefore in the interest of borrowers to complete loss mitigation applications as early in the delinquency and foreclosure process as possible. However, even if a borrower does not complete a loss mitigation application sufficiently early in the process to secure *all* the protections possibly available under § 1024.41, that borrower may still benefit from some of the protections afforded. Borrowers should not be discouraged from completing loss mitigation applications merely because they cannot complete a loss mitigation application by the date that would be most advantageous in terms of securing the protections available under § 1024.41. Accordingly, the goal of § 1024.41(b)(2)(ii) is to inform borrowers of the time by which they should complete their loss mitigation applications to receive the greatest set of protections available, without discouraging later efforts if the borrower does not complete the loss mitigation application by the suggested date. The Bureau notes § 1024.41(b)(2)(ii) requires servicers to inform borrowers of the date by which the borrower *should* make the loss mitigation application complete, as opposed to the date by which the borrower *must* make the loss mitigation application complete.

The Bureau believed, based on communications with consumer advocates, servicers, and trade associations, that the requirement in § 1024.41(b)(2)(ii) may be overly prescriptive and may prevent a servicer from having the flexibility to suggest an appropriate date by which a borrower should complete a loss mitigation application. For example, if a borrower submits a loss mitigation application on the 114th day of delinquency, the servicer would have to inform him or her by the 119th day that the borrower should complete the loss mitigation application by the 120th day under the current provision. A borrower is unlikely to be able to assemble the missing information within one day, and would be better served by being advised to complete the loss mitigation application by a reasonable later date that would afford the borrower most of the benefits of the rule as well as enough time to gather the information.

In response to these concerns, and in accordance with the goals of the provision, the Bureau proposed to amend the requirement in § 1024.41(b)(2)(ii). Specifically, the Bureau proposed to replace the requirement that a servicer disclose the earliest remaining date of the four specific dates set forth in § 1024.41(b)(2)(ii) with a more flexible requirement that a servicer determine and disclose a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. The Bureau proposed to clarify this amendment in proposed comment 41(b)(2)(ii)-1, which would have explained that, in determining a reasonable date, a servicer should select the deadline that preserves the maximum borrower rights under § 1024.41, except when doing so would be impracticable. Proposed comment 41(b)(2)(ii)-1 would have clarified further that a servicer should consider the four deadlines previously set forth in § 1024.41(b)(2)(ii) as factors in selecting a reasonable date. Proposed comment 41(b)(2)(ii)-1 also would have clarified that if a foreclosure sale is not scheduled, for the purposes of determining a reasonable date, a servicer may make a reasonable estimate of when a foreclosure sale may be scheduled. This proposal was intended to provide appropriate flexibility while also requiring that servicers consider the impact of the various times, and the associated protections, set forth in § 1024.41.

Comments

The Bureau received comments from industry as well as consumer groups addressing these proposed provisions. Industry commenters appreciated the extra flexibility offered by the proposal, but expressed concern about the complexity of selecting a date. Such commenters noted that different servicers might have different estimates of what should be a reasonable time for otherwise similarly situated borrowers, and differences in state law might also cause two apparently similar borrowers to receive different notices. Additionally, these commenters expressed concern that ambiguity in what is "practical" increases the risk of litigation. These commenters suggested either a simpler rule, under which the application should be complete by the earlier of 30 days after the borrower submitted the incomplete application or the 38th day before a scheduled foreclosure sale (an approach taken by HAMP), or that the Bureau provide additional guidance for determining what is impractical. Finally, commenters expressed concern about borrower confusion, stating that borrowers will not understand the significance of the various dates.

Consumer groups expressed concern that if servicers have discretion about how to inform borrowers when they should complete their applications, servicers will misguide borrowers and cause them to complete applications too late to receive all the protections that could have been available under the rule. Additionally, some consumer groups expressed the view that this whole issue would be avoided if the loss mitigation protections were triggered by an initial application package, defined as a specific subset of documents required for loss mitigation, rather than a complete loss mitigation application.

Final Rule

The Bureau is amending the text of § 1024.41(b)(2)(ii) to require that the related notice must include a reasonable date by which the borrower should submit the missing information. Additionally, the Bureau is adopting an revised version of proposed comment 41(b)(2)(ii)-1 to clarify what is a reasonable date to include in a notice sent pursuant to § 1024.41(b)(2)(i)(B). Similar to the proposal, final comment 41(b)(2)(ii)-1 states that, in determining a reasonable date, a servicer should select the date that preserves the maximum borrower rights possible under

§ 1024.41 (and provides the four milestones originally in the regulation text), except when doing so would be impracticable to permit the borrower sufficient time to obtain and submit the type of documentation needed. The final comment has been amended to state further that, generally, it would be impracticable for a borrower to obtain and submit documents in less than seven days.

As discussed in the proposed rule, the Bureau has structured this provision so that borrowers receive information that encourages them to submit a complete application in time to receive the most protections possible under the rule, while not discouraging borrowers who miss this time from later submitting an application to receive a subset of the protections. Because some of the protections are triggered by the submission of a complete loss mitigation application when a certain amount of time remains before a scheduled foreclosure sale, the protections decrease the later a borrower submits an application. Thus, the Bureau declines to adopt a rule that simply suggests the borrower complete the application within 30 days because such a rule will not meet the intended purposes of the provision.

The Bureau also understands that a borrower may not understand the significance of certain milestones, and may be confused if presented by a list of different dates. This is the very reason the rule requires the servicer to provide a single date by which the borrower should complete the application—it removes the burden from the borrower of calculating the different timelines and attempting to determine by when they should complete their application.

The Bureau does appreciate the challenges of determining what would be impracticable, thus the Bureau has added language to the commentary explaining that generally it would be impracticable for a borrower to obtain and submit documents in less than seven days. The Bureau notes this is a minimum number of days, and that a servicer may extend this timeline if it believes the borrower would need more time to gather the information. The Bureau believes this approach gives servicers guidance as to what is impracticable, while allowing some flexibility for servicers to address situations where additional time would be required for the borrower to submit particular types of missing information.

Finally, while the final rule does not permit servicers to estimate foreclosure sale dates in other contexts, such as for purposes of determining whether a borrower will be granted an appeal right when no foreclosure sale has actually been scheduled, the Bureau believes it appropriate to allow servicers to estimate a foreclosure sale date for the narrow purpose of this provision. The Bureau notes that servicers may have information about when a foreclosure sale is likely to be scheduled and that allowing a servicer to use this information in determining the time by which a borrower should complete the application would provide the most useful date for borrowers. Thus, the Bureau includes this provision in the comment adopted by this final rule.

The Bureau notes that some consumer groups suggested loss mitigation protections should be triggered by an initial application package, defined as a specific subset of documents required for loss mitigation, rather than a complete loss mitigation application. The Bureau notes that while such an approach has been used in other loss mitigation programs, such a modification to the loss mitigation provisions of § 1024.41 is beyond the scope of the proposed changes to the rule.

41(b)(3) Determining Protections

The Proposal

The Bureau proposed to add new § 1024.41(b)(3) addressing the borrowers' rights in situations in which no foreclosure sale has been scheduled as of the date a complete loss mitigation application is received, or a previously scheduled foreclosure sale is rescheduled after receipt of a complete application. As discussed in the proposal, § 1024.41 is structured to provide different procedural rights to borrowers and impose different requirements on servicers depending on the number of days remaining until a foreclosure sale is scheduled to occur, as of the time that a complete loss mitigation application is received. However, the provisions of § 1024.41 do not expressly address situations in which a foreclosure sale has not yet been scheduled at the time a complete loss mitigation application is received, or is rescheduled after the application is received. Since issuance of the final rule, the Bureau has received questions about the applicability of the timing provisions in such situations. Specifically, industry stakeholders have asked whether it is appropriate to use estimated dates of foreclosure where a foreclosure sale has not been scheduled at the time a complete loss mitigation application is received. Further, industry stakeholders have requested guidance on how to apply the timelines if no foreclosure is scheduled as of the date a complete loss mitigation application is received, but a foreclosure sale is subsequently scheduled less than 90 days after receipt of such application, or if a foreclosure sale has been scheduled for less than 90 days after a complete application is received, but is then postponed to a date that is 90 days or more after the receipt date.

The Bureau proposed new § 1024.41(b)(3), which stated that, for purposes of § 1024.41, timelines based on the proximity of a foreclosure sale to the receipt of a complete loss mitigation application will be determined as of the date a complete loss mitigation application is received. Proposed comment 41(b)(3)-1 would have clarified that if a foreclosure sale has not yet been scheduled as of the date that a complete loss mitigation application is received, the application shall be treated as if it were received at least 90 days before a foreclosure sale. Proposed comment 41(b)(3)-2 would have clarified that such timelines would remain in effect even if at a later date a foreclosure sale was rescheduled.

The Bureau believed this approach would provide certainty to both servicers and borrowers as well as ensure that borrowers receive the broadest protections available under the rule in situations in which a foreclosure sale has not been scheduled at the time a borrower submits a complete loss mitigation application. In the proposal, the Bureau also discussed alternative modifications to the rule, which the Bureau declined to propose, including having the applicable timelines vary depending on the newly scheduled (or re-scheduled) sale date, or allowing servicers to estimate when a foreclosure sale might be scheduled. On balance, the Bureau believed that a straightforward rule under which the protections that attach are determined as of the date of receipt of a complete loss mitigation application, and a complete loss mitigation application is treated as having been received 90 days or more before a foreclosure sale if no sale is scheduled as of the date the application is received, is preferable because it would provide industry and borrowers with clarity regarding its application, without the unnecessary complexity that other approaches might produce. The Bureau recognized that the proposed rule might in some cases require a servicer to delay a foreclosure sale to allow the specified time for the borrower to respond to a loss mitigation offer and to appeal the servicer's denial of a loan modification option, where applicable, and sought comment and supporting data regarding circumstances in which this may occur.

Comments

The Bureau received comments from industry as well as consumer groups addressing these proposed provisions. Overall, commenters appreciated the clarity and simplicity of the proposed rule. They supported the idea that borrower protection should be clear and certain. One consumer advocate expressed concern that the rule limits, but does not eliminate, dual tracking. This commenter was concerned that a sale may be scheduled with less than 37 days' notice. Another consumer advocate suggested the rule should always adopt the most consumer-friendly timeline. That is, if a sale is postponed, a borrower should receive the benefit of any extra protections that might arise given a longer time between the sale and the submission of a complete application; but if a sale is scheduled to occur on a short timeline, the borrower should not lose the original protections that had attached on the basis of the longer timeline.

Industry commenters expressed concern about the feasibility of the proposed rule. Such commenters were concerned this may inappropriately extend the timeline of a foreclosure sale. These commenters urged the Bureau to limit the appeal right to when a complete application is submitted within 30 days of the first notice or filing required for a foreclosure sale. Alternatively, some commenters urged the Bureau to allow servicers to estimate when a foreclosure sale may occur. For example, one commenter suggested such estimates could be based on estimates provided by nationally recognized sources. Finally, industry commenters expressed concern the proposed provision may not be feasible because a servicer may be unable to move a scheduled foreclosure sale. One commenter recommended the Bureau offer an exemption from liability when an investor or court requires a servicer to continue with a foreclosure sale in violation of the applicable timelines.

Final Rule

The Bureau is finalizing § 1024.41(b)(3) and its related commentary substantially as proposed, but with minor wording changes. For the reasons discussed in the proposal, the Bureau believes the final rule appropriately balances consumer protection and servicer needs. This approach provides certainty to both servicers and borrowers, as well as ensures that borrowers receive the broadest protections available under the rule in situations where a foreclosure sale has not been scheduled at the time a complete loss mitigation application is received.

The Bureau declines to adopt other approaches suggested in comments. The Bureau notes that structuring the rule such that a borrower's rights may be added or removed because a foreclosure sale was moved or rescheduled would not provide the certainty or simplicity created by the proposed rule. Further, the Bureau is concerned that if moving a foreclosure sale to a later date could trigger new protections, such a policy may provide a disincentive for a servicer to reschedule a foreclosure sale for a later date. Finally, the Bureau does not believe it is appropriate to limit the appeal rights to when a complete application is submitted within 30 days of the first notice or filing, because, regardless of when a first notice or filing is made, a servicer should be able to provide a borrower an appeal when there is sufficient time before the scheduled foreclosure sale.

The Bureau does not believe that the rule being finalized, which grants the borrower certain rights if a borrower submits a complete loss mitigation application before a sale has been scheduled, will cause inappropriate delays in the foreclosure process. First, while some States may schedule foreclosure sales to occur in less than 90 days of the scheduling of the sale, completing the process of reviewing a loss mitigation application may not necessitate a delay in the scheduled sale. For example, if the scheduling of a sale occurs 30 days after a complete loss mitigation application is submitted, and the sale is scheduled for 60 days after the scheduling occurs, the servicer will have sufficient time to follow the complete loss mitigation procedures without having to move the foreclosure sale. Second, servicers control many of the timelines in the process, including the 30-day evaluation window, and the time to process an appeal. If a foreclosure sale is rescheduled to occur in less than 90 days after a borrower submitted a complete application, a servicer does have the option to review the application quickly and, in doing so, the servicer may avoid the need to postpone the foreclosure sale.

In situations where there is a conflict (a later scheduled foreclosure sale that does not allow a servicer or borrower sufficient time to complete the procedures required by the loss mitigation rules), the Bureau expects a servicer to take the necessary steps to avoid having the foreclosure sale occur before the loss mitigation review procedures run their course, including asking a court to move a scheduled foreclosure sale, if necessary. An important objective of the 2013 Mortgage Servicing Final Rules is to ensure that loss mitigation applications receive careful review, so that a servicer does not foreclose on a borrower who would have qualified for a loss mitigation option and who timely submitted a complete application for loss mitigation. Consistent with that objective, once a borrower has submitted an application, a servicer should carry out the procedures prescribed by the rule in light of the timing and content of the application. To permit a later scheduled (or rescheduled) foreclosure sale to cut short those procedures would be inconsistent with the objective just described. For these reasons, the Bureau finalizes the rule substantially as proposed, with minor wording changes.

41(c) Evaluation of Loss Mitigation Applications

41(c)(1) Complete Loss Mitigation Application

41(c)(1)(ii)

The Bureau proposed to amend § 1024.41(c)(1)(ii) to state explicitly that the notice this provision requires must state the deadline for accepting or rejecting a servicer's offer of a loss mitigation option, in addition to the requirements currently in § 1024.41(d)(2) to specify, where applicable, that the borrower may appeal the servicer's denial of a loan modification option, the deadline for doing so, and any requirements for making an appeal. As described in the proposal, the Bureau intended that the § 1024.41(c)(1)(ii) notice would specify the time and procedures for the borrower to accept or to reject the servicer's offer, in accordance with requirements specified in § 1024.41(e). Indeed, § 1024.41(e)(2)(i) provides that the servicer may deem the borrower to have rejected the offer if the borrower does not respond within the timelines specified under § 1024.41(e)(1). Further, under § 1024.41(e)(2)(ii) and that the servicer must give the borrower a reasonable opportunity to complete documentation necessary to accept an offer of a trial loan modification plan if the borrower does not follow the specified procedures but begins making payments in accordance with the offer by the deadline specified in § 1024.41(e)(1). Commenters did not have any objections to the proposed provision, and the Bureau is adopting this provision as proposed.

41(c)(2) Incomplete Loss Mitigation Application Evaluation

41(c)(2)(iii) Payment Forbearance

The Proposal

The Bureau proposed to modify § 1024.41(c)(2) to allow servicers to offer short-term forbearance to borrowers based on a review of an incomplete loss mitigation application, notwithstanding that provision's restriction on servicers offering a loss mitigation option to a borrower based on the review of an incomplete loss mitigation application. In adopting the 2013 Mortgage Servicing Final Rules, the Bureau crafted broad definitions of "loss mitigation option" and "loss mitigation application" for purposes of § 1024.41, to provide a streamlined process in which a borrower will be evaluated for all available loss mitigation options at the same time, rather than having to apply multiple times to be evaluated for different options one at a time. Since publication of the final rule, however, both industry and consumer advocates have raised questions and concerns about how the rule applies in situations in which a borrower needs and requests only short-term forbearance. For instance, a number of servicers have inquired about whether the rule would prevent them from granting a borrower's request for waiver of late fees or other short-term relief after a natural disaster until the borrower submits all information necessary for evaluation of the borrower for long-term loss mitigation options. Additionally, both consumer advocates and servicers have raised questions about whether a borrower's request for short-term relief would later preclude a borrower from invoking the protections afforded by the rule if the borrower encounters a significant change in circumstances that warrants long-term loss mitigation alternatives.

The Bureau was conscious of the difficulties involved in distinguishing short-term forbearance programs from other types of loss mitigation and of the concern that some servicers may have significantly exacerbated borrowers' financial difficulties by using short-term forbearance programs inappropriately instead of reviewing the borrowers for long-term options. Nevertheless, the Bureau believed that it was possible to revise the rule to facilitate appropriate use of short-term payment forbearance programs without creating undue risk for borrowers who need to be evaluated for a full range of loss mitigation alternatives.

At the outset, the Bureau noted that it does not construe the existing rule to require that servicers obtain a complete loss mitigation application prior to exercising their discretion to waive late fees. Additionally the Bureau noted that, under the rule as adopted, a servicer may offer any borrower any loss mitigation option if the borrower has not submitted a loss mitigation application or if the offer is not based on an evaluation of an incomplete loss mitigation application, as clarified in existing comment 41(c)(2)(i)-1.

With regard to short-term forbearance programs that involve more than simply waiving late fees, such as where a servicer allows a borrower to forgo making a certain number of payments and then to catch up by spreading the unpaid amounts over some subsequent period of time, the Bureau believed that the issues raised by various stakeholders could most appropriately be addressed by providing more flexibility to servicers to provide such relief even if it is based on review of an incomplete loss mitigation application. Thus, the Bureau did not propose to change the current definition of loss mitigation option, which includes all forbearance programs. Rather, the Bureau proposed to relax the anti-evasion restriction in § 1024.41(c)(2)(i), which prohibits a servicer from offering a loss mitigation option based upon an evaluation of an incomplete loss mitigation application.

The Bureau thus proposed § 1024.41(c)(2)(iii), which would have allowed short-term payment forbearance programs to be offered based on a review of an incomplete loss mitigation application. The proposed exemption would have applied only to short-term payment forbearance programs. Proposed comment 41(c)(2)(iii)-1 stated that a payment forbearance program is a loss mitigation option for which a servicer allows a borrower to forgo making certain payments for a period of time. Short-term payment forbearance programs may be offered when a borrower is having a short-term difficulty brought on, for example, by a natural disaster. In such cases, the servicer offers a short-term payment forbearance arrangement to assist the borrower in managing the hardship. The Bureau explained that, in its view, it is appropriate for servicers to have the flexibility to offer short-term payment forbearance programs prior to receiving a complete loss mitigation application for all available loss mitigation options. Proposed comment 41(c)(2)(iii)-1 also would have explained that a short-term program is one that allows the forbearance of payments due over periods of up to two months.

The Bureau noted that, under the proposed approach, servicers that receive a request for short-term payment forbearance and grant such requests would remain subject to the requirements triggered by the receipt of a loss mitigation application in § 1024.41. Thus, as explained in proposed comment 41(c)(2)(iii)-2, if a servicer offers a payment forbearance program based on an incomplete loss mitigation application, the servicer still would be required to review the application for completeness, to send the § 1024.41(b)(2)(i)(B) notice to inform the borrower whether the application is complete or incomplete, and if incomplete what documents or additional information are required, and to use reasonable diligence to complete the loss mitigation application. If a borrower in this situation submits a complete application, the servicer must evaluate it for all available loss mitigation options. The Bureau believed that maintaining these requirements is important to ensure that borrowers are not inappropriately diverted into short-term forbearance programs without access to the full protections of the regulation. At the same time, if a borrower in fact does not want an evaluation for long-term options, the borrower may simply refrain from providing the additional information necessary to submit a complete application and the servicer will therefore not be required to conduct a full assessment for all options.

To ensure that a borrower who is receiving an offer of short-term payment forbearance understands the options available, proposed § 1024.41(c)(2)(iii) would have required a servicer offering a short-term payment forbearance program to a borrower based on an incomplete loss mitigation application to include in the § 1024.41(b)(2)(i)(B) notice additional information, specifically that: (1) the servicer has received an incomplete loss mitigation application and on the basis of that application the servicer is offering a short-term payment forbearance program; (2) absent further action by the borrower, the servicer will not be reviewing the incomplete application for other loss mitigation options; and (3) if the borrower would like to be considered for other loss mitigation options, he or she must submit the missing documents and information required to complete the loss mitigation application. The Bureau believed that providing borrowers this more specific information is important to ensure that borrowers do not face unwarranted delays and paperwork and that servicers do not misuse short-term forbearance to avoid addressing long-term problems.

Finally, the Bureau proposed comment 41(c)(2)(iii)-3 to clarify servicers' obligations on receipt of a complete loss mitigation application. The proposed comment would have stated that, notwithstanding that a servicer may have offered a borrower a payment forbearance program after an evaluation of an incomplete loss mitigation application, and even if the borrower accepted the payment forbearance offer, a servicer must still comply with all requirements in § 1024.41 on receipt of a borrower's submission of a complete loss mitigation application. This proposed comment was intended to clarify that, even though payment forbearance may be offered as short-term assistance to a borrower, a borrower is still entitled to submit a complete loss mitigation application and receive an evaluation of such application for all available loss mitigation options. Although payment forbearance may assist a borrower with a short-term hardship, a borrower should not be precluded from demonstrating a long-term inability to afford the original mortgage, and being considered for long-term solutions, such as a loan modification, when that may be appropriate.

Comments

The Bureau received comments from both industry and consumer group commenters on this provision. Commenters were generally very supportive of allowing an exclusion from the full loss mitigation procedures for short-term problems, that is, problems that can be quickly resolved (*e.g.*, a borrower needed new tires for his or her car and thus falls a month behind on mortgage payments). They asserted that short-term problems are better resolved quickly and that the full loss mitigation procedures should apply only to consumers with long-term problems. One industry commenter stated that the paperwork of the full procedures would be seen as burdensome when a borrower had a short-term problem, and this would be perceived as poor customer service. Additionally, commenters pointed out that, under § 1024.41(i), a borrower is entitled to the full procedures for only a single complete loss mitigation application, and it would not be in the borrower's best interest to "waste" that single evaluation under the full procedures on a simple, short-term problem. Consumer advocate commenters suggested that borrowers should be warned before they use their single evaluation.

Both consumer advocate and industry commenters expressed concern that the two-month forbearance contemplated by the proposed rule was too brief. Such commenters urged the Bureau to permit payment forbearances of as long as six months or a year, to allow borrowers the opportunity to resolve their problems (for example, attempting to find a new job) before using up their opportunities to be evaluated for long-term options, such as a loan modification. Further, commenters expressed that the industry standard for payment forbearance programs was longer than two months – often six months or even a year. Finally, commenters expressed that short-term forbearances were particularly important for addressing two situations, unemployment and natural disasters.

Final Rule

The Bureau is adopting § 1024.41(c)(2)(iii) generally as proposed. However, in light of comments received, the Bureau has made some adjustments to the proposed provisions. As discussed below, the Bureau is clarifying the servicer's reasonable diligence obligation when a borrower has been offered a payment forbearance based on evaluation of an incomplete loss mitigation application, and the Bureau has adjusted the limit on the length of payment forbearances that would be allowed under this provision.

Payment forbearance based on an incomplete application. The Bureau is adopting, with some adjustments, the general exclusion for short-term forbearance from the prohibition on offering loss mitigation based on an incomplete application. The Bureau continues to believe this exclusion is appropriate, because it should provide servicers greater flexibility to address short-term problems quickly and efficiently. Further, because the exclusion applies to decisions based on review of incomplete loss mitigation applications, it will allow the borrower's short-term problems to be addressed while preserving a borrower's single use of the full § 1024.41 loss mitigation procedures.

The Bureau declines to exclude payment forbearance from the definition of loss mitigation. The final rule provides the same benefits in flexibility that would be achieved by revising the definition of loss mitigation while preserving important consumer protections. If a borrower requests payment forbearance, he or she should be regarded as having requested loss mitigation under the terms of § 1024.41, and the procedures generally required by the rule should take place. Further, the Bureau notes that a borrower always has the option of completing his or her loss mitigation application and receiving a full evaluation for all options. This is reflected in comment 41(c)(2)(iii)-3, which states that even if a servicer offers a borrower a payment forbearance program after an evaluation of an incomplete loss mitigation application, the servicer must still comply with all other requirements in § 1024.41 if the borrower completes his or her loss mitigation application.

The Bureau notes that the new provision addresses only payment forbearance that is offered based on an evaluation of an incomplete application. The Bureau is aware, as some commenters noted, that situations may arise where a borrower completes a loss mitigation application and goes through a full loss mitigation evaluation, and the end result is the borrower being offered a payment forbearance—which would exhaust his or her single use of the § 1024.41 loss mitigation procedures. The Bureau notes that some consumer advocates asked the Bureau to exempt any such loss mitigation evaluation from the successive request provision in § 1024.41(i), or require that such borrowers be warned so they know not to complete their application if they are seeking only payment forbearance.

While the Bureau acknowledges these concerns, the Bureau notes that the proposal was limited to discussing payment forbearance based on *incomplete* applications, and comments addressing payment forbearance based on *complete* applications are beyond the scope of the proposed rule. Further, the Bureau notes that the loss mitigation rules are intended to address only procedures, and leave the substantive decisions on different loss mitigation programs to the discretion of the owner or assignee. Finally, the Bureau notes that any issues related to the second or successive request provision in § 1024.41(i) would more appropriately be addressed in a rulemaking focusing on that provision.

Payment forbearance and reasonable diligence. The proposed provision on payment forbearance included a modification to the § 1024.41(b)(2)(i)(B) notice, which would have required the notice to include additional information when a servicer was offering a borrower payment forbearance based on an incomplete application. While the Bureau believes it is important for borrowers to be informed that they are being offered payment forbearance based on an incomplete loss mitigation application and they may receive a full review for all other options by completing their applications, the Bureau believes that servicers should have flexibility to provide this message at the appropriate time. A servicer may, in some circumstances, need to communicate additional information regarding payment forbearance. For example, a servicer may require additional information—short of a complete loss mitigation application—to offer a borrower a payment forbearance program. Further, the Bureau acknowledges that a servicer may decide to offer a borrower payment forbearance at various stages of the loss mitigation process, and the message should be provided at the appropriate time. For example, if a servicer needs additional information before offering payment forbearance, the servicer might not decide to offer a borrower payment forbearance until after the § 1024.41(b)(2)(i)(B) notice has been sent out. In light of these considerations, the Bureau declines to finalize the provision regarding modification of the § 1024.41(b)(2)(i)(B) notice in the context of payment forbearance. Instead, the Bureau has amended comment 41(b)(1)-4, added paragraph 4.iii, which addresses a servicer's reasonable diligence obligations. The comment explains that, when a servicer offers a borrower payment forbearance based on an incomplete application, the servicer should notify the borrower that the borrower may complete the application to receive a full evaluation of all loss mitigation options available to the borrower.

The Bureau believes a servicer's diligence obligations may vary depending on the facts and circumstances. In some instances, it may be appropriate for servicers to include this additional information in the § 1024.41(b)(2)(i)(B) notice. For example, if a servicer decides to offer a borrower payment forbearance based on the initial submission that establishes the loss mitigation application (*e.g.*, the borrower calls the servicer and, on the basis of that call, the servicer decides to offer the borrower payment forbearance), the servicer might include the message (that the borrower is being offered payment forbearance but may complete the application to receive a full evaluation) in the § 1024.41(b)(2)(i)(B) notice, along with the full list of information and documents necessary to complete the loss mitigation application.

Alternatively, if the servicer wanted to offer the borrower a payment forbearance program, but needed a few additional documents to do so, the servicer might send a § 1024.41(b)(2)(i)(B) notice explaining that the borrower has the option of submitting a few items and receiving payment forbearance, or submitting all the missing information and receiving a full evaluation. If the borrower submitted only the items for the payment forbearance and the servicer offered the borrower a payment forbearance program, at that time the servicer could to notify the borrower that he or she has the option of completing the application.

Conversely, if the servicer does not decide to offer a payment forbearance program based on an evaluation of an incomplete loss mitigation application until after the § 1024.41(b)(2)(i)(B) notice has been sent, the servicer would still have the option of offering the borrower payment forbearance at that later time. The servicer would notify the borrower that he or she has the option of completing the application at the time the servicer offered the payment forbearance program.

In addition, the Bureau is adding a new subpart to comment 41(b)(1)-4 to further elaborate on the servicer's reasonable diligence obligation when a borrower is considered for short-term forbearance under this provision. Once a borrower has begun a payment forbearance program, the Bureau believes the servicer need not continue to request missing items from the borrower during the course of the payment forbearance program, unless the borrower fails to comply with the payment forbearance program or the borrower indicates he or she would like to continue completing the application. Thus, comment 41(b)(1)-4.iii states that, once a servicer provides this notification, the servicer could suspend reasonable diligence efforts until near the end of the payment forbearance program, so long as the borrower remains in compliance with the payment forbearance program and does not request any further assistance.

Finally, the Bureau believes that, unless the borrower has brought his or her loan current, it may be necessary for the servicer to contact the borrower prior to the end of the forbearance period to determine if the borrower wishes to complete the application and proceed with a full loss mitigation evaluation. Thus, comment 41(b)(1)-4.iii states that near the end of the program, and prior to the end of the forbearance period, it may be necessary for the servicer to contact the borrower to determine if the borrower wishes to complete the application and proceed with a full loss mitigation evaluation.

Length of payment forbearance. The Bureau is amending the proposed interpretation of "short-term" forbearance, in light of public comments that supported the general exception, but suggested that an exception permitting only two-month forbearances would be of limited benefit to borrowers and servicers. The Bureau is persuaded that a two-month payment forbearance window may not allow the borrower sufficient time to remedy even some short-term problems. As adopted, comment 41(b)(2)(iii)-1 explains that "short-term" forbearance means a program that allows the forbearance of payments due over periods of no more than six months, as opposed to two months. The Bureau notes that this six-month period may cover time both before and after the payment forbearance was granted (for example, if a borrower is one month delinquent when a servicer offers a payment forbearance program, the program may only extend 5 months into the future). The Bureau believes the extended timeline allows the servicer sufficient flexibility to address most short-term situations.

As discussed in the proposal, the Bureau was concerned that, if a servicer offered a borrower a payment forbearance of more than two months, the borrower may lose the benefit of the 120-day foreclosure referral prohibition in § 1024.41(f)(1), because the 120 days may run out during the course of the forbearance plan. The Bureau believes that, as part of a payment forbearance program as contemplated by this rule, a servicer should not foreclose on a borrower who is complying with the payment forbearance program. To make explicit that this restriction is an aspect of the payment forbearance programs permissible under the new provision, the Bureau has added a foreclosure protection clause to the payment forbearance provision in § 1024.41(c)(2)(iii).

The Bureau received comments requesting longer payment forbearance programs and noting that existing programs that may be offered through HUD or HAMP, or by the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation (collectively "GSEs"), may offer payment forbearance for periods extending beyond six months to a year, particularly in situations such as natural disaster or unemployment. The Bureau remains convinced that, if a borrower has a long-term problem, such a borrower should, if the borrower chooses, receive a full evaluation for all loss mitigation options. Because forbearance programs under § 1024.41(c)(2)(iii) should only be used for temporary problems, the Bureau believes it is important to reassess a borrower's situation after no more than six months.

However, the new rule does not preclude a servicer from offering multiple successive short-term payment forbearance programs. As discussed below in the Section 1022(b)(2) of the Dodd-Frank Act analysis, the Bureau has sought to ensure that borrowers would receive significant benefits from the additional option without losing protections provided by § 1024.41. Commenters strongly felt that a short forbearance period would not provide much additional benefit to borrowers, and further explained that a payment forbearance of less than a year may interfere with existing programs under HUD, HAMP, and the GSEs. The Bureau acknowledges that a borrower will generate a significant unpaid debt over the course of a long forbearance period. However, the Bureau notes that a borrower who believes the circumstances warrant cutting a long forbearance short can receive a full review for all loss available mitigation options by submitting a complete loss mitigation application. In addition, the Bureau believes that the risk servicers would attempt to evade the full loss mitigation procedures by offering sequential six-month forbearances to delinquent borrowers is low. Thus, the Bureau believes that borrowers benefit more from renewable forbearance agreements than they would benefit from any limit the Bureau might impose at this time on the maximum number of forbearances. The Bureau notes, however, that while the final rule does not prohibit a servicer from offering multiple short-term forbearances under this provision, the Bureau intends to monitor how temporary forbearances are used after this final rule becomes effective and, if it determines servicers are inappropriately offering sequential payment forbearances, may address the issue in a later rulemaking or by other means at a later date.

41(c)(2)(iv) Facially Complete Application

The Proposal

As discussed above, the Bureau proposed new § 1024.41(c)(2)(iv), which stated that if a servicer creates a reasonable expectation that a loss mitigation application is complete but later discovers additional documents or information is needed to evaluate the application, the servicer shall treat the application as complete as of the date the borrower had reason to believe the application was complete, for purposes of applying § 1024.41(f)(2) and (g), until the borrower has been given a reasonable opportunity to complete the loss mitigation application. This provision was designed to work together with proposed new comments 41(b)(2)(i)-1 and -2, as discussed above, to address situations when a servicer determines that an application the servicer previously determined to be complete (or to be missing particular information) is in fact is lacking additional information needed for evaluation.

The Bureau has received questions about the impact of an error in the notice required by § 1024.41(b)(2)(i)(B), particularly in light of the short time the servicer has to review the information submitted by the borrower. As discussed above, the Bureau recognizes that, in certain circumstances, an application may appear to be complete (or to be missing only specific information), but the servicer, upon further evaluation, may determine that additional information is needed before the servicer can evaluate the borrower for all available loss mitigation options. The proposed commentary to § 1024.41(b)(2)(i) was intended to clarify that servicers are required to obtain the missing information in such situations. Proposed § 1024.41(c)(2)(iv) was intended to protect borrowers while a servicer requests the missing information.

Proposed comment 41(c)(2)(iv)-1 would have clarified that a reasonable expectation is created when the borrower submits all the missing items (if any) identified in the § 1024.41(b)(2)(i)(B) notice. When a reasonable expectation that a loss mitigation application is complete is created but the servicer later discovers that the application is incomplete, proposed § 1024.41(c)(2)(iv) would have provided that the servicer shall treat the application as complete for certain purposes until the borrower has been given a reasonable opportunity to supply the missing information necessary to complete the loss mitigation application. Specifically, under this provision, the servicer would need to treat the application as complete for purposes of the foreclosure referral prohibition in § 1024.41(f)(2) and the foreclosure sale limitations in § 1024.41(g). Proposed § 1024.41(c)(2)(iv) would have ensured that servicers that made bona fide mistakes in making initial determinations of completeness need not be considered in violation of the rule, and that borrowers do not lose protections under the rule due to such mistakes. The Bureau believed that, once a borrower is given reason to believe he or she has the benefit of certain protections (which are triggered by submission of a complete loss mitigation application), if the servicer discovers that an application is incomplete, the borrower should have a reasonable opportunity to complete the application before losing the benefit of such protections.

Proposed comment 41(c)(2)(iv)-2 would have provided guidance on what would be a reasonable opportunity for the borrower to complete a loss mitigation application. The comment states that a reasonable opportunity requires that the borrower be notified of what information is missing and be given sufficient time to gather the information and submit it to the servicer. The amount of time that is sufficient for this purpose would depend on the facts and circumstances.

The Bureau believed that proposed § 1024.41(c)(2)(iv) would preserve servicers' obligation to conduct rigorous up-front reviews, while providing servicers the ability to correct a good-faith mistake or clerical error. Further, servicers seeking relief under the provision need only give borrowers a reasonable opportunity to provide the missing information, thus allowing a servicer to continue the foreclosure process if a borrower does not provide such information.

Comments

As discussed above in the section-by-section analysis of § 1024.41(b)(2)(i), the Bureau received comments from industry as well a consumer groups addressing these proposed provisions. Commenters were generally supportive of the Bureau addressing situations where a servicer later discovers additional documents or information are required to complete a loss mitigation application. However, commenters sought additional clarification on several aspects of the proposed amendment. First, commenters sought clarification on when a borrower's rights or protections are triggered. Commenters also expressed concern that it was unclear when a reasonable expectation had been created. For example, one commenter stated that a servicer may argue a homeowner had no reasonable expectation even if a complete application was submitted. Second, commenters sought clarification as to what would be considered a reasonable amount of time for a borrower to complete an application. Commenters suggested a set number of days should be given. Finally, commenters asked what happens after the missing information is provided or a reasonable time passes and the borrower fails to provide the information. Some commenters stated that the application should be considered complete only as of the date the missing information was provided and the application was actually completed. Other commenters stated the application should be treated as if it were complete when the reasonable expectation was created. One commenter pointed out that the expectation should be created based on the borrower's action (submitting the items requested in the § 1024.41(b)(2)(i)(B) notice), rather than on an action (or inaction) of the servicer. As this commenter noted, if a borrower initially submits a complete application, the related protections of the rule should be triggered when the borrower submits the application, not when the servicer sends the § 1024.41(b)(2)(i)(B) notice. Therefore, this commenter asserted, if a borrower is asked to provide certain items, the protections should be triggered when those items are provided, not when the servicer deems the application to be complete. Finally, some commenters suggested the proposed revisions should go further and require a confirmation notice, as well as provide additional guidance on the timing and content of that notice. For example, one commenter suggested that servicers should be required to explain the reason a particular document does not meet underwriting guidelines, rather than simply requesting the document again.

Final Rule

The Bureau is adopting a final version of § 1024.41(c)(2)(iv) that is similar to the proposed version, but with some modifications. First, the Bureau is not including the "reasonable expectation" standard set forth in the proposal. Instead, the provision as adopted states that, if a borrower submits all the missing information listed in the notice required pursuant to § 1026.41(b)(2)(i)(B), or if no additional information is requested in such notice, the application shall be considered "facially complete" and will trigger certain borrower protections. Upon further consideration, the Bureau believes the subjective nature of the term "reasonable expectation" could have resulted in unnecessary compliance challenges and confusion as to when a reasonable expectation had been established. The Bureau believes the concept of facial completeness, on the other hand, provides greater clarity to servicers and borrowers.

Second, the Bureau is modifying proposed § 1024.41(c)(2)(iv) to enhance borrower protections by providing that servicers are required to treat a "facially complete" application as complete for purposes of the § 1026.41(h) appeal right and the borrower response timelines in § 1024.41(e). As discussed above, proposed § 1026.41(c)(2)(iv) would have required servicers to treat the application as complete for purposes of the foreclosure referral ban in § 1024.41(f)(2) and the foreclosure sale limitations in § 1024.41(g) until the borrower had been given a reasonable opportunity to supply the missing information necessary to complete the loss mitigation application. However, for purposes of the appeal right under § 1024.41(h) and the borrower response timelines under § 1024.41(e), the proposal would have treated the application as complete only once the borrower submitted the additional information or documents needed to evaluate the application. Thus, under the proposal, if a servicer gave a borrower a reasonable expectation that he or she had submitted a complete application more than 90 days before a scheduled foreclosure sale but later requested more information pursuant to new § 1024.41(c)(2)(iv), the borrower might not have received the right to an appeal or to a 14-day response time depending on the timing of the supplemental information request and the borrower's response. The Bureau has been persuaded that such a borrower should enjoy the benefit of the appeal right and the 14-day response timeline. Furthermore, the Bureau is persuaded by the comment that suggested that the protections of § 1024.41 should be triggered based on the date when a borrower submits all the documents and information as stated in the § 1024.41(b)(2)(i)(B) notice, rather than when the servicer deems the application to be complete.

Thus, under § 1026.41(c)(2)(iv) as adopted by the final rule, if a borrower submits a facially complete application that is later found by the servicer to require additional information or corrected documents to be evaluated, and the borrower subsequently provides the corrected documents or information necessary to complete the application, the application is treated as complete, for the purposes of § 1024.41(d), (e), (f)(2), (g), and (h), as of the date it was facially complete. However, the 30-day window during which the servicer must evaluate the borrower for all available loss mitigation options (as required pursuant to § 1026.41(c)) will begin only when the servicer receives the missing information. The Bureau continues to believe there is little value in requiring a servicer to evaluate a loss mitigation application when a servicer has determined certain items of information are missing.

Finally, Bureau has adopted new comment 41(c)(2)(iv)-2 to address situations in which a borrower fails to provide the missing information within a reasonable timeframe as prescribed by the servicer. This comment states that, if the borrower fails to complete the application within the reasonable timeframe, the servicer may treat the application as incomplete.

The Bureau is not addressing in this final rule comments that suggested further protections for borrowers are needed, including additional notice requirements. The Bureau believes these concerns are adequately addressed. Several protections already established by the rule, including the requirement to have polices and procedures reasonable designed to achieve the objective of facilitating compliance with the requirement to send an accurate § 1024.41(b)(2)(i)(B) notice (in § 1024.38(b)(2)(iv); the continuity of contact requirements in § 1024.40, and the obligation on the servicer to use reasonable diligence in completing an application already require that servicers work with borrowers to complete a loss mitigation application. For example, the reasonable diligence obligation requires servicers to promptly seek documents or information necessary to complete a loss mitigation application, which the Bureau believes includes an obligation to work proactively with borrowers when they discover any additional documents or information are needed to complete the application, as well as notify a borrower when a submitted document is insufficient to complete an application–for example, because a signature is missing. Servicers cannot be dilatory in seeking such materials or corrected documents. Given these and other protections and obligations, the Bureau believes borrowers will be adequately protected, because the rules should ensure they receive the benefits of foreclosure protections at the time their applications are facially complete, and will continue to receive those protections once they have submitted the additional materials. The Bureau notes that a servicer that complies with § 1024.41(c)(2)(iv) will be deemed to have satisfied the requirement to provide an accurate § 1024.41(b)(2)(i)(B) notice. The Bureau believes this approach appropriately balances the servicer's need to collect additional pieces of information while still providing protection for the borrower.

41(d) Denial of Loan Modification Options

The Proposal

The Bureau proposed to move the substance of § 1024.41(d)(2), a provision addressing disclosure of information on the borrower's right to appeal, to § 1024.41(c)(1)(ii). As a conforming amendment, the Bureau proposed to re-codify § 1024.41(d)(1) as § 1024.41(d) and to re-designate the corresponding commentary accordingly. The Bureau is finalizing these provisions as proposed.

The Bureau also proposed to clarify the requirement in § 1024.41(d)(1), re-codified as § 1024.41(d), that a servicer must disclose the reasons for the denial of any trial or permanent loan modification option available to the borrower. The Bureau believed it was appropriate to clarify that the requirement to disclose the reasons for denial focuses on only those determinations actually made by the servicer and does not require a servicer to continue evaluating additional factors after the servicer has already decided to deny a borrower for a particular loss mitigation option. Thus, when a servicer's automated system uses a program that considers a borrower for a loan modification by proceeding through a series of questions and ends the process if the consumer is denied, the servicer need not modify the system to continue evaluating the borrower under additional criteria. For example, suppose a borrower must meet qualifications A, B, and C to receive a loan modification, but the borrower does not meet any of these qualifications. A servicer's system may start by asking if the borrower meets qualification A, and on the failure of that qualification end the analysis for that specific loan modification option. If a servicer were required to disclose all potential reasons why the borrower may have been denied for that loan modification option (*i.e.*, A, B, and C), it would need to consider a lengthy series of hypothetical scenarios: for example, if the borrower had met qualification A, would the borrower also have met qualification B? The Bureau did not intend such a requirement, which it believes would be unnecessarily burdensome.

The Bureau instead intended to require only the disclosure of the actual reason or reasons on which the borrower was evaluated and denied. Accordingly, the Bureau proposed to amend § 1024.41(d) to require that a denial notice provided by the servicer must state the "specific reason or reasons" for the denial and also, where applicable, disclose that the borrower was not evaluated based on other criteria. The notice would not be required to list such criteria. The Bureau believed that this additional information will help borrowers understand the status of their application and the fact that they were not fully evaluated under all factors (where applicable). The Bureau also proposed new comment 41(d)-4 stating that, if a servicer's system reaches the first issue that causes a denial but does not evaluate borrowers for additional factors, a servicer need only provide the reason or reasons actually considered. The Bureau believed this proposed amendment would appropriately balance potential concerns about compliance challenges with concerns about informing borrowers about the status of their applications and about information that is relevant to potential appeals.

Comments

The Bureau received comments from both industry and consumer groups addressing the proposed modifications. Commenters were generally in favor of this revision to the rule, and agreed it would be unduly burdensome for servicers to construct systems to consider hypothetical scenarios solely for the purpose of compiling a complete list of all potential denial reasons. One industry commenter suggested that the denial reasons disclosed be limited to "primary" or "initial" reasons. One consumer group expressed concern that the proposed revision would allow servicers to avoid disclosing the factors used in the net present value analysis.

Final Rule

For the reasons discussed in the proposal, the Bureau is finalizing the rule as proposed. The Bureau declines to modify the rule to require only the "initial" or "primary" reasons as suggested by some commenters because the Bureau believes these terms are unclear. The

Bureau also disagrees with commenters that suggested that the modification to the rule allows a servicer to evade disclosure of a factor used in an NPV analysis. The rule requires servicers to disclose the basis for the denial, so if a servicer denies a borrower for a loan modification option based on an NPV analysis, that servicer must disclose the factors used in the analysis. However, if a servicer denies a borrower a loan modification option on other grounds, it would be unduly burdensome for the servicer to disclose factors that would have been used, had the servicer done a NPV analysis.

41(f) Prohibition on Foreclosure Referral

First Notice or Filing

The Proposal

Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan is more than 120 days delinquent. A servicer also is prohibited from making such a notice or filing while a borrower's complete loss mitigation application is being evaluated. In response to numerous questions received by the Bureau about the meaning of the phrase "first notice or filing," the Bureau proposed to redesignate comment 41(f)(1)-1 as comment 41(f)-1, and then revise it to clarify what actions § 1024.41(f) would prohibit.

Specifically, the proposed comment would have stated that whether a document is considered the first notice or filing is determined under applicable State law. Under the proposal, a document that would be used as evidence of compliance with foreclosure practices required pursuant to State law would have been considered the first notice or filing. Thus, a servicer would have been prohibited from sending such a notice or filing such a document during the pre-foreclosure review period or during the review period for a complete loss mitigation application. Documents that would not be used in this fashion would not have been considered the first notice or filing. The proposed comment would have stated expressly that this prohibition does not extend to activity such as attempting to collect the debt, sending periodic statements, sending breach letters, or any other activity during the pre-foreclosure review period, so long as such documents would not be used as evidence of complying with requirements applicable pursuant to State law in connection with a foreclosure process.

The Bureau acknowledged that, under the proposed interpretation, if a State law mandates a notice to a borrower of the availability of mediation as a prerequisite to commence foreclosure, such notices would be considered the "first notice or filing" for purposes of § 1024.41. The Bureau also recognized that existing State foreclosure processes often can be lengthy. The proposed comment sought to balance protecting consumers and encouraging communication between borrowers and servicers by providing borrowers sufficient time to submit a complete loss mitigation application without the stress and costs of foreclosure, but also permitting servicers to communicate with borrowers to respond promptly to requests. However, recognizing potential practical difficulties for servicers as well as borrower protection concerns that could arise from chilling early communications provided for borrowers under State law, the Bureau sought comment on the best way to establish a workable rule that clearly identifies what is prohibited, while balancing these goals.

Comments

The Bureau received substantial comments from trade associations, individual servicers including credit unions, the GSEs, some State governments, and two consumer advocacy groups, which generally disagreed with the proposed "evidence of compliance with State law" standard and asked the Bureau to reconsider the scope of the prohibition. Numerous commenters, including trade organizations, the GSEs, individual servicers and credit unions, asserted that the proposed comment would cause significant delays in the foreclosure process, especially where the first notice or filing would be followed by lengthy periods mandated by State law before actual initiation of court proceedings or establishing a foreclosure sale date. These commenters asserted that the proposal would have prohibited often lengthy processes from starting until after 120 days of delinquency have passed. For example, commenters noted that Massachusetts requires its own notice and opportunity to cure process that may take up to 150 additional days before foreclosure is filed. Thus, if the notice beginning that cure process is deemed the "first notice" for purposes of the prohibition on foreclosure referral (as it would have been under the proposal), foreclosure proceedings may be delayed until the 270th day of delinquency. One industry commenter raised concerns that such delays would impact compliance with regulatory capital requirements.

Industry commenters expressed substantial concerns with the proposal's use of the phrase "evidence of compliance with State law." These commenters asserted that the phrase is vague, and that State law may often require proof of compliance with the mortgage contract's terms, which may include the sending of general default notices not expressly required by statute. The commenters indicated servicers would have difficulty understanding what documents were prohibited and likely would be discouraged from sending any early communications to borrowers if they later must use such document to show compliance with applicable State law.

Industry commenters, State governments, and some consumer advocates indicated that the proposal likely would delay notices required under State-mandated pre-foreclosure programs. As these commenters noted, under the proposal such notices likely would constitute "evidence of compliance with State law" and thus would be prohibited until after the 120th day of delinquency. These commenters also asserted that such programs complement the Bureau's early intervention rule and that there is substantial benefit to borrowers in receiving these notices early in their delinquencies. For example, many statutory notices require that counseling, legal aid, or other resources be identified to borrowers, and consumer groups agreed that borrowers are more likely to respond and seek loss mitigation when they receive notices clearly informing them that foreclosure is imminent if they do not act. Several commenters pointed to data or experience that indicated many borrowers do not reach out to servicers for loss mitigation assistance until foreclosure notices or notices of default are sent. These commenters believed that borrowers would receive little benefit if these notices were delayed until after the 120th day of delinquency because the likelihood of a successful resolution would be reduced. On the whole, these commenters indicated that delaying State-mandated notices relating to loss mitigation programs or statutory rights to cure delinquencies would frustrate State efforts at avoiding foreclosure by making resolutions more difficult or cure more costly to consumers.

As an alternative to the proposed interpretation of "first notice or filing," many industry commenters recommended that the Bureau adopt an interpretation based on the Federal Housing Administration's (FHA) definition of "first legal," citing familiarity with this concept. In the alternative, some industry commenters suggested a more uniform and objective definition or a State-by-State determination. These commenters generally stated that a prohibition that extends to documents defined in a manner that closely tracks "first legal" would better facilitate compliance for industry, while at the same time would permit and encourage the early notices to borrowers, including those that provide counseling, legal aid, or other resources. A number of commenters suggested that specific notices be expressly permitted, including State-mandated outreach to delinquent borrowers and breach letters required by the GSEs.

Final Rule

The Bureau is adopting a revised version of proposed comment 41(f)-1 that states a document is considered the "first notice or filing" on the basis of foreclosure procedure under applicable State law, but adjusts the Bureau's interpretation of what constitutes a "first notice or filing." Rather than relying on the general notion that any evidence of compliance with State foreclosure law constitutes a first notice or filing, the Bureau is revising comment 41(f)-1 and adopting four new subparts that are more specifically addressed to different types of foreclosure procedures. New comment 41(f)-1.i explains that, when the foreclosure procedure under applicable State law requires commencement of a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (*e.g.*, a complaint, petition, order to docket, notice of hearing). The Bureau also is adopting new comment 41(f)-1.ii, which explains that, when the foreclosure procedure under applicable State law does not require a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process. To address situations not already covered by comments (i) and (ii), new comment 41(f)-1.iii provides that, where a foreclosure procedure does not require initiating a court action or proceeding or recording or publishing of any document, a document is considered a "first notice or filing" if it is the first document which establishes, sets or schedules the foreclosure sale date.

As noted above, the proposal sought to balance protecting consumers and encouraging communication between servicers and borrowers. The Bureau believed that, under the proposed interpretation of "first notice or filing," borrowers would be ensured sufficient time to submit a complete loss mitigation application, but servicers would still be able to send many of the typical early-default communications, so long as they were not being used as evidence of compliance with State law. The Bureau requested comment on whether the proposal established a workable rule that was clear, in light of varied foreclosure procedures in different states, and the multiple purposes for notices. As noted above, many commenters, including consumer advocate groups and State governments, indicated concerns with the proposed interpretation's impact on communication and its impact on State-mandated loss mitigation programs. Many commenters asserted that the proposal would result in either less or ineffective early default communication and *lessen* the likelihood that borrowers would successfully access loss mitigation resolutions or otherwise avoid foreclosure.

The Bureau is persuaded by these comments that revising the interpretation is necessary to provide greater clarity and also provide for more effective pre-foreclosure outreach. As commenters noted, the proposed interpretation would have prohibited the use of many State-mandated notices that do not initiate foreclosure proceedings and are intended to provide borrowers with information about counseling and other loss mitigation resources as a means of avoiding foreclosure. In addition, the Bureau is persuaded by comments that the proposed interpretation would have chilled other servicer communications, such as cure notices or breach letters, based on confusion over whether such communications were "evidence of compliance" and thus prohibited by § 1024.41.

The Bureau believes the interpretation of first notice or filing adopted by this final rule provides an objective basis for determining compliance with the prohibition on foreclosure referral. In addition, it addresses the concerns raised in comments that the proposal would restrict communications informing borrowers of assistance and statutory rights to cure. The Bureau agrees with commenters that permitting communication about cure rights or pre-foreclosure loss mitigation assistance or procedures available under State law, even within the first 120 days of a borrower's delinquency, furthers the objective of § 1024.41's loss mitigation procedures. The Bureau believes early communication to borrowers about resources such as housing counseling, emergency loan programs, and pre-foreclosure mediation will increase the likelihood that borrowers will submit complete applications in time to benefit from the full loss mitigation procedures under § 1024.41. The Bureau appreciates that, under this modified interpretation, some borrowers who have not yet submitted loss mitigation applications may face shorter foreclosure timeframes after the 120th day of delinquency than under the proposed interpretation. However, the Bureau believes the adopted interpretation provides sufficient opportunity for borrowers to seek loss mitigation assistance without the pressure of pending litigation or foreclosure proceedings. The Bureau also believes a borrower's ability to exercise a statutory or contractual right to cure a default likely will be greater where notice of the cure rights is provided before several months of arrearages have accumulated. While the proposed interpretation was not intended to prohibit sending any such notice, only one that would be used as evidence of compliance with applicable law, the modified interpretation provides greater clarity.

The Bureau acknowledges that its interpretation of "first notice or filing" may prohibit, during the 120-day period, initiation of State-mandated loss mitigation efforts or opportunities to cure in those jurisdictions where the applicable foreclosure procedure requires such information to appear first in a court filing, or a document that is recorded or published. However, were the Bureau to adopt an interpretation that excluded such notices from the definition of first filing, based on their inclusion of information related to cure rights or loss mitigation assistance, this likely would create significant confusion and frustrate the purposes of the rule, by permitting certain foreclosure actions within the 120-day period.

Finally, the Bureau is adding new comment 41(f)-1.iv to clarify that a document provided to a borrower that initially is not required to be filed, recorded or published is not considered the first notice or filing solely on the basis that the foreclosure procedure requires a copy of the document to be included as an attachment to a subsequent document required to be filed or recorded to carry out the foreclosure process. The Bureau is aware through comments that, in many states, letters or notices (including breach letters, notices of rights to cure) that are required to be sent to the borrower, *but do not initiate formal foreclosure proceedings*, nonetheless are required to be included in later filings, *i.e.*, as part of a complaint or subsequent pleading. Such letters or notices may be sent during the pre-foreclosure review period without violating the foreclosure referral ban.

The interpretation of "first notice or filing" adopted by this final rule closely tracks, but may not be identical in all jurisdictions, to the FHA's "first legal action necessary to initiate foreclosure" or "first legal" or "first public" action, as some commenters requested.[24] However, the Bureau believes to the extent there are jurisdictions where "first notice or filing" of § 1024.41(f) is inconsistent with the FHA standard, it will not hinder servicers' compliance with obligations under the FHA or investor requirements based upon the FHA's standard. The Bureau notes that the "first legal" standard primarily serves to inform mortgagees of their contractual obligations as servicers of FHA-insured mortgages. In light of the fact that § 1024.41(f) is enforceable by private right of action, the Bureau is adopting this interpretation of "first notice or filing" in order to provide sufficient clarity to borrowers, servicers, and courts.

[24] See Department of Housing and Urban Development, Mortgagee Letter 2005-30, July 12, 2005.

The Bureau also believes this interpretation provides States with clarity of the application of § 1024.41(f), not just as to present State foreclosure procedure but with respect to future modifications of State law.

Exceptions to the Prohibition of Early Foreclosure Referrals

The Proposal

The Bureau also proposed to amend § 1024.41(f)(1) so that the prohibition on referral to foreclosure until after the 120th day of delinquency would not apply in two situations: (1) when the foreclosure is based on a borrower's violation of a due-on-sale clause, and (2) when the servicer is joining the foreclosure action of a subordinate lienholder. As discussed in the proposal, the Bureau is aware that there may be some circumstances when a foreclosure is not based upon a borrower's delinquency, and thus protections designed to provide delinquent borrowers time to bring their mortgages current or apply for loss mitigation (such as the 120-day ban on foreclosure referral) may not be appropriate or necessary. The Bureau proposed amending § 1024.41(f)(1) to provide the two exemptions for foreclosures based upon due-on-sale clauses and for joining a subordinate lienholder's foreclosure, but also recognized that other situations may exist that also warrant exclusion. Thus, in addition to the two situations described above, the Bureau sought comment on what other situations may be appropriate to exempt, or whether the proposed exemptions were appropriate in situations in which a borrower has submitted a complete loss mitigation application.

Comments

The Bureau received substantial comments from trade associations, individual servicers including credit unions, and the GSEs, which generally supported the added exemptions to § 1024.41(f)(1). Industry commenters generally supported the proposed exemptions, citing a need to provide relief from the foreclosure referral ban where default is based upon a non-monetary provision of a mortgage. With respect to the Bureau's request for comment on other situations that may warrant exclusion, numerous commenters suggested the Bureau provide guidance or add exemptions for foreclosure based upon a determination that the property was abandoned or vacant. Some commenters advocated an exemption for abandoned properties and suggested the Bureau provide a list of factors to be considered in determining whether the property was abandoned. Consumer groups, however, expressed concerns that, because abandonment or vacancy status is necessarily a fact-specific determination, an exemption may facilitate evasion.

In addition, some commenters suggested the Bureau exempt situations where the borrower is deceased without heirs or in other cases. Some industry commenters requested that the rule permit foreclosure within the 120-day period where borrowers have failed to maintain insurance or property tax payments or where the borrower had failed to pay late fees. Finally, some commenters requested an exemption for other situations including where borrowers commit waste, are non-responsive to the servicer's attempts to maintain live contact, or state a desire to surrender the property.

Consumer groups acknowledged that situations may exist that warrant exclusion from the 120-day prohibition, such as the proposed exemptions, but raised concerns about their breadth. Specifically, these commenters expressed concerns that an exemption for all foreclosures based on violation of a due-on-sale clause may be overly broad, and could be construed to allow foreclosure where the transfer is to a deceased borrowers' family member or where a transfer occurs as a result of State divorce decree or probate order, or other transfer to a borrower's family member. Many of these commenters suggested that the exemption expressly exclude such transfers to the extent they were protected under the Garn-St. Germain Act.[25] Consumer advocate commenters also suggested that the exemption for joining a foreclosure action of a subordinate lienholder should be limited to situations where all of the servicers and lienholders with respect to the property are separate entities.

Final Rule

The Bureau is adopting the amendments to § 1024.41(f)(1) as proposed, without adopting additional exemptions. The Bureau appreciates comments that suggested the 120-day prohibition was designed to protect delinquent borrowers, but should not extend to non-monetary defaults or breaches of the underlying mortgage agreement. However, the Bureau remains mindful of consumer protection concerns that could arise from a broader set of exemptions. For example, industry commenters suggested that foreclosure based on a borrower's failure to maintain insurance or pay property taxes should be excluded, but, as some of these commenters acknowledged, those and other examples provided are likely to coincide with borrower delinquency. The Bureau does not believe that servicers should be allowed to sidestep the borrower protections set forth in § 1024.41 for delinquent borrowers simply because borrowers may have breached other components of the underlying mortgage, such as requirements to pay property taxes, maintain insurance, or pay late fees. The Bureau believes that additional exemptions would create uncertainty and could potentially be construed in a manner that permits evasion of the requirements of § 1024.41(f). Moreover, the Bureau does not believe exemption from the pre-foreclosure review period is appropriate merely because foreclosure is based upon

[25] Garn-St. Germain Depository Institutions Act, Pub. L. No. 97-320 (1982) (codified in various sections). The Act generally prohibits the exercise of due-on-sale clauses with respect to certain protected transfers. See 12 U.S.C. § 1701j-3.

an obligation other than the borrower's monthly payment. In many instances, these borrowers are likely experiencing financial distress and thus may benefit from time to seek loss mitigation.

For similar reasons, the Bureau does not believe it is appropriate to adopt an exemption from the 120-day prohibition for situations where a borrower may be deemed to commit "waste" in violation of an underlying mortgage agreement. As noted above, the Bureau is concerned that such an exemption could be used to circumvent the 120-day prohibition for borrowers who are also delinquent. However, the Bureau also notes that what constitutes waste is very fact-specific and the few commenters who suggested an exemption provided no precise definition of the term. Furthermore, while mortgages typically permit foreclosure in the event of waste, they also frequently provide other non-foreclosure remedies. In light of the absence of evidence suggesting waste that would necessitate rapid foreclosure is a significant problem, the Bureau is convinced that no such exemption is necessary.

In addition, the Bureau does not believe any further narrowing or clarifying revisions to the due-on-sale clause exemption in § 1024.41(f)(1)(i), to protect transfers to family members or transfers ordered by divorce decree or probate proceedings, are necessary. The Bureau notes that, to the extent the Garn-St. Germain Act prohibits the exercise of due-on-sale clauses, the exemption from the 120-day period would not apply. The exemption does not alter limitations or obligations imposed on a servicer by another Federal or State law with respect to whether a due-on-sale clause validly may be exercised. Rather it merely provides an exception to the 120-day pre-foreclosure review period where the basis for foreclosure is a due-on-sale clause. The Bureau notes that servicers may not avail themselves of the due-on-sale clause exemption and make the first notice or filing before the 120th day of delinquency unless such a clause is validly enforceable.

The Bureau is also not adopting any limitation on the exemption for joining a foreclosure initiated by a subordinate lienholder. The Bureau does not believe it is appropriate to limit the exemption application to only those situations where the senior and junior liens are held or serviced by separate entities, as was requested. In the case where an entity services both a first and a second lien, the servicer will be required to complete the pre-foreclosure review for the second lien, and will be required to respond to a borrower's loss mitigation application with respect to the first mortgage as well. Furthermore, the comments did not provide an adequate explanation to persuade the Bureau that servicers are more likely to pursue foreclosure in a manner that evades the 120-day pre-foreclosure review period when the senior and junior lien are held and serviced by the same entity.

Finally, the Bureau notes that several commenters requested that the Bureau exempt vacant or abandoned properties from the 120-day prohibition. However, while many commenters asserted that there is a limited benefit to prohibiting foreclosure referral where a property is "vacant" or "abandoned', they also generally agreed that such a determination depends on the individual facts and circumstances, and may vary according applicable State law. While some commenters suggested the Bureau adopt a multiple-factor test to determine whether a property was "abandoned," the Bureau believes any such test would inherently rely on a holistic determination based on individual facts and circumstances, and would not provide the clear guideline that the Bureau believes is appropriate with respect to the prohibition on foreclosure referral. Moreover, as noted by consumer groups, a number of borrower protection concerns could arise from affording servicers too much discretion in determining whether a property is abandoned or vacant. In addition, some industry commenters conceded that it would be rare for a property to be determined abandoned or vacant earlier than the 120th day of delinquency.

For these reasons, the Bureau is not adopting an exclusion from the 120-day prohibition for vacant or abandoned properties. However, the Bureau notes that the provisions of §§ 1024.39 through 1024.41 apply only to a mortgage loan secured by property that is a borrower's principal residence. *See* 12 C.F.R. § 1024.30(c)(2). Thus, depending on the facts and circumstances, it is possible that some foreclosures against vacant or abandoned properties will not be subject to § 1024.41(f).

41(h) Appeal Process

41(h)(4) Appeal Determination

The Bureau proposed to amend § 1024.41(h)(4) to provide expressly that the notice informing a borrower of the determination of his or her appeal must also state the amount of time the borrower has to accept or reject an offer of a loss mitigation option after the notice is provided to the borrower. The Bureau did not receive any comments on this provision and is finalizing it as proposed.

41(j) Prohibition on Foreclosure Referral

As discussed above, the Bureau is adopting, as proposed, amendments to § 1024.41(f)(1) that exempt two situations from the prohibition on referral to foreclosure until after the 120th day of delinquency: when the foreclosure is based on a borrower's violation of a due-on-sale clause and when the servicer is joining the foreclosure action of a subordinate lienholder. The Bureau also proposed corresponding amendments to the provision in § 1024.41(j), which provides the same prohibition with respect to small servicers. While the Bureau received a number of comments regarding the proposed amendments to § 1024.41(f)(1) as discussed above, the Bureau received no comments addressing the corresponding amendments to § 1024.41(j). Accordingly, the Bureau is adopting, as proposed, the amendments to § 1024.41(j) to allow foreclosure before the 120th day of delinquency when the foreclosure is based on a borrower's violation of a due-on-sale clause and when the servicer is joining the foreclosure action of a subordinate lienholder, by incorporating a cross-reference to § 10124.41(f)(1).

C. Regulation Z

General—Technical Corrections

In addition to the clarifications and amendments to Regulation Z discussed below, the Bureau proposed technical corrections and minor clarifications to wording throughout Regulation Z that are not substantive in nature. The Bureau is adopting such technical and wording clarifications as proposed to regulatory text in §§ 1026.23, 1026.31, 1026.32, 1026.35, and 1026.36 and to commentary to §§ 1026.25, 1026.32, 1026.34, 1026.36, and 1026.41. In addition, the Bureau is adding additional technical corrections to regulation text in § 1026.43 and commentary to §§ 1026.25, 1026.32, and 1026.43. The Bureau also is making one correction to an amendatory instruction that relates to FR Doc. 2013-16962, published on Wednesday July 24, 2013.

Section 1026.23 Right of Rescission

23(a) Consumer's Right to Rescind

23(a)(3)(ii)

The Bureau proposed to amend § 1026.23(a)(3)(ii) to update a cross-reference within that section from § 1026.35(e)(2), as adopted by the Bureau's Amendments to the 2013 Escrows Final Rule under the Truth in Lending Act (Regulation Z) (May 2013 Escrows Final Rule),[26] to

[26] 78 FR 30739 (May 23, 2013).

§ 1026.43(g). The cross-reference in the May 2013 Escrows Final Rule is the correct cross-reference during the time period that rule will be in effect for transactions where applications are received on or after June 1, 2013, but prior to January 10, 2014. For transactions where applications are received on or after January 10, 2014, the correct cross-reference will be to § 1026.43(g). For this reason, the Bureau proposed to remove the cross-reference to §1026.35(e)(2) and replace it with a cross-reference to § 1026.43(g). The Bureau received no comments addressing this change and is finalizing this amendment as proposed.

Section 1026.32 Requirements for High-Cost Mortgages

32(b) Definitions

The Bureau's 2013 ATR Final Rule and 2013 HOEPA Final Rule contain provisions that relate to a transaction's "points and fees."[27] As adopted by the 2013 ATR Final Rule, § 1026.43(e)(2)(iii) sets forth a cap on points and fees for a closed-end credit transaction to acquire qualified mortgage status. As adopted by the 2013 HOEPA Final Rule, § 1026.32(a)(1)(ii), sets forth a points and fees coverage threshold for both closed- and open-end credit transactions. Definitions of points and fees for closed- and open-end credit transactions were also provided by these two final rules.

For purposes of both the qualified mortgage points and fees cap and the high-cost mortgage coverage threshold, § 1026.32(b)(1) defines "points and fees" for closed-end credit transactions.[28] Section 1026.32(b)(1)(i) defines points and fees for closed-end credit transactions to include all items included in the finance charge as specified under § 1026.4(a) and (b), with the exception of certain items specifically excluded under § 1026.32(b)(1)(i)(A) through (F).

[27] *See* 78 FR 6407 (Jan. 30, 2013); 78 FR 6856 (Jan. 31, 2013). The Bureau also addressed points and fees in the May 2013 ATR Final Rule. *See* 78 FR 35430 (June 12, 2013).
[28] Section 1026.43(b)(9) provides that, for the qualified mortgage points and fees cap, "points and fees" has the same meaning as in § 1026.32(b)(1).

These excluded items include interest or time-price differential; certain types and amounts of mortgage insurance premiums; certain bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either; and certain bona fide discount points paid by the consumer. Section 1026.32(b)(1)(ii) through (vi) lists (as clarified by this final rule) certain other items that are specifically included in points and fees, including compensation paid directly or indirectly by a consumer or creditor to a loan originator; certain real-estate related items listed in § 1026.4(c)(7) unless certain conditions are met; premiums for various forms of credit insurance, including credit life, credit disability, credit unemployment and credit property insurance; the maximum prepayment penalty, as defined in § 1026.32(b)(6)(i), that may be charged or collected under the terms of the mortgage loan; and the total prepayment penalty as defined in § 1026.32(b)(6)(i) or (ii) incurred by the consumer if the consumer refinances an existing mortgage loan or terminates an existing open-end credit plan in connection with obtaining a new mortgage loan with the current holder of the existing loan or plan (or a servicer acting on behalf of the current holder, or an affiliate of either).

Points and fees for open-end credit plans for purposes of the high-cost mortgage thresholds is defined in section 1026.32(b)(2), which essentially follows the inclusions and exclusions set out in § 1026.32(b)(1) for closed-end transactions, with several modifications and additional inclusions related to fees charged for open-end credit plans.

32(b)(1)

The Proposal

Prior to the Dodd-Frank Act, TILA section 103(aa)(1)(B) provided that a mortgage is subject to the restrictions and requirements of HOEPA if the total points and fees "payable *by the consumer* at or before closing" (emphasis added) exceed the threshold amount. However, section 1431(a) of the Dodd-Frank Act amended the points and fees coverage test to provide in TILA section 103(bb)(1)(A)(ii) that a mortgage is a high-cost mortgage if the total points and fees "payable *in connection with the transaction*" (emphasis added) exceed newly established thresholds. Similarly, TILA section 129C(b)(2)(A)(vii) provides that points and fees "payable *in connection with the loan*" (emphasis added) are included in the points and fees calculation for qualified mortgages. As adopted by the 2013 ATR and HOEPA Final Rules, which implemented these changes, the definition of points and fees includes certain charges not paid by the consumer.

Following publication of the Bureau's ATR and HOEPA Final Rules, the Bureau received numerous questions from industry seeking guidance regarding the treatment of third party-paid charges and creditor-paid charges for purposes of the points and fees calculation. Based on these questions, the Bureau determined that additional clarification concerning the treatment of charges paid by parties other than the consumer, including third parties, for purposes of inclusion in or exclusion from points and fees would be beneficial to consumers and creditors and facilitate compliance with the final rules. The Bureau therefore proposed to add new commentary to § 1026.32(b)(1) to clarify when charges paid by parties other than the consumer, including third parties, are included in points and fees. Specifically, the Bureau proposed to add new comment 32(b)(1)-2 to clarify the treatment of charges imposed in connection with a closed-end credit transaction that are paid by a party to the transaction other than the consumer, for purposes of determining whether that charge is included in points and fees as defined in § 1026.32(b)(1). The proposed comment would have stated that charges paid by third parties that fall within the definition of points and fees set forth in § 1026.32(b)(1)(i) through (vi) are included in points and fees, and would have provided examples of third-party payments that are included and excluded. In discussing included charges, the proposed comment noted that a third-party payment of an item excluded from the finance charge under a provision of § 1026.4, while not included in points and fees under § 1026.32(b)(1)(i), may be included under § 1026.32(b)(1)(ii) through (vi). In discussing excluded charges, the proposed comment stated that a charge paid by a third party is not included in points and fees under § 1026.32(b)(1)(i) as a component of the finance charge if any of the exclusions from points and fees in § 1026.32(b)(1)(i)(A) through (F) applies.

The proposed comment also discussed the treatment of "seller's points," as described in § 1026.4(c)(5) and commentary. The proposed comment would have stated that seller's points are excluded from the finance charge and thus are not included in points and fees under § 1026.32(b)(1)(i), but also would have noted that charges paid by the seller may be included in points and fees if the charges are for items in § 1026.32(b)(1)(ii) through (vi).

Finally the proposed comment would have restated for clarification purposes that, pursuant to § 1026.32(b)(1)(i)(A) and (ii), charges that are paid by the creditor, other than loan originator compensation paid by the creditor that is required to be included in points and fees under § 1026.32(b)(1)(ii), are excluded from points and fees. In proposing this clarification, the Bureau noted that, to the extent that the creditor recovers the cost of such charges from the consumer, the cost is recovered through the interest rate, which is excluded from points and fees under § 1026.32(b)(1)(i)(A). Specifically, the Bureau noted, § 1026.32(b)(1)(i) and (b)(1)(i)(A) implements section 103(bb)(4)(A) of TILA to include in points and fees "[a]ll items included in the finance charge under § 1026.4(a) and (b)" but specifically excludes "interest and time-price differential." However, the Bureau noted further, under § 1026.32(b)(1)(ii) compensation paid by the creditor to loan originators, other than employees of the creditor, is included in points and fees.

In proposing this comment, the Bureau stated its belief that the proposed comment's clarification of the treatment of charges paid by parties other than the consumer for points and fees purposes was consistent with the amendment to TILA made by section 1431(a) of the Dodd-Frank Act, discussed above.

Comments

The Bureau received comments on this aspect of the proposal from industry trade associations, banks, mortgage companies, and a manufactured housing lender. Many of these comments expressed general concerns or disagreements with the points and fees thresholds or other aspects of points and fees that were not at issue in the proposal, or expressed general support or disagreement with the treatment of charges paid by parties other than the consumer for purposes of the points and fees determination, particularly with respect to charges paid to creditor affiliates. The Bureau notes that it proposed commentary clarifying only the application of § 1026.32(b)(1) and (2) to charges paid by parties other than the consumer, and does not consider these comments responsive to the proposal.

Other commenters suggested further revisions to the Bureau's comment with regard to its discussion of third-party-paid charges, and seller's points. Some industry commenters expressed particular concern about the impact of the proposed comment on certain employer payments of employee relocation expenses, for example employer payment of discount points on behalf of their employees to encourage them to relocate. These commenters generally raised concerns that inclusion in points and fees could discourage relocation incentives, and requested that the Bureau exclude employer-paid charges from points and fees.

Most industry commenters expressed support for the clarifications that seller's points are generally excluded from points and fees (as they are not included as a finance charge under § 1026.4(c)(5)), but some commenters expressed concern about the possible inclusion of some seller-paid charges in points and fees. For example, some industry commenters also expressed concern that the possible inclusion of some seller-paid charges would create difficulties for creditors in determining which seller payments are included in points and fees and which are not. Specifically, some commenters noted that creditors may have difficulty in determining how seller assistance is allocated in the transaction, because a seller-paid amount is often provided as a flat dollar amount or a percentage of the purchase price that allows the borrower to determine how it should be applied, or the allocation changes at the closing table. As a proposed solution, one financial institution recommended that the Bureau's final comment allow creditors to rely on any written statement provided by the borrower, third party, or seller regarding the purpose of the payment.

Industry commenters were generally supportive of the Bureau's proposed comment with regard to creditor-paid charges. Commenters generally stated that the Bureau's proposed comment provided helpful language that clarified that creditor-paid amounts are excluded from points and fees (other than loan originator compensation). Some suggested, however, that it would be additionally helpful if further comments were added to state explicitly that such charges are excluded from the finance charge, and that it is not material to this calculation that a creditor either absorbs the charges or provides a credit to pay them in return for a higher rate.

Final Rule

The Bureau is adopting comment 32(b)(1)-2 as proposed, with several modifications.

The Bureau believes that the comment as proposed, with several modifications, provides needed clarification to creditors to assist them in determining what is included in points and fees. The comment specifically describes when third-party-paid charges, including seller's points, are to be included in points and fees and when they are to be excluded, and provides examples. In addition, the comment treats third-party-paid charges consistently with the treatment of consumer-paid charges under § 1026.32(b)(1) and current commentary (*i.e.*, comment 32(b)(1)(i)-1)). Specifically, it provides that a third-party payment of a charge is included in points and fees if it falls within the definition of points and fees set forth in § 1026.32(b)(1)(i) through (vi)—which includes items included in the finance charge under § 1026.4(a) and (b). It also provides that, while a third-party paid charge may be excluded from the finance charge under § 1026.4, it may be included in the points and fees calculation under § 1026.32(b)(1)(ii) through (vi) such as, for example, if the third–party payment is for items such as compensation to a loan originator, certain real estate related items listed in § 1026.4(c)(7), premiums for certain credit insurance, and a prepayment penalty incurred by the consumer in some circumstances. The comment also specifically describes the treatment of seller's points, which, like other items excluded from the finance charge, are not included in points and fees under § 1026.32(b)(1)(i) but nevertheless may be included in points and fees if listed in § 1026.32(b)(1)(ii) through (vi). In addition, the comment specifically addresses the treatment of creditor-paid charges and excludes them from points and fees with the exception of a payment for loan originator compensation.

The Bureau further notes that the comment treats seller's points consistently with the definition of points and fees in Regulation Z by excluding them from the points and fees calculation (as they are excluded from the finance charge), except in certain instances specified in Regulation Z. Section 1026.32(b)(1) defines points and fees to include all items included in the finance charge under § 1026.4(a) and (b), except for certain specified exclusions. This includes the § 1026.4(c)(5) exclusion of seller's points from the finance charge.

The Bureau notes that some commenters expressed concern about the ability of creditors to determine what third-party paid charges, including seller's payments, should be included in points and fees—specifically that creditors may be aware that a lump-sum amount was advanced by the seller, but not aware of the breakdown of what exactly was paid for by the advance. The Bureau appreciates this concern and does believe creditors could be confronted with situations where they are unsure how they should account for the seller or third-party amount in points and fees, particularly as relates to the specific fee breakdown. For example, the Bureau agrees that, if a seller paid $1000 in excluded seller's points, $500 in fees that would be included in points and fees, and another $500 in fees that would be excluded, all the creditor may be aware of is that $2,000 was advanced. Absent additional information, the creditor may have difficulty in determining what, if any, portion of the seller-paid amount needs to be included in points and fees (in the example above, $500). To facilitate compliance, the Bureau is modifying the final comment to clarify that creditors may rely on written statements from the borrower or third party, including the seller, as to the source of the funds and the purpose of the payment in calculating the points and fees involving third-party payments.

As discussed, some commenters expressed concern that the Bureau's treatment of third-party paid charges as provided in its proposed comment would adversely affect employer relocation assistance arrangements for employees that include assistance to the employee in financing the purchase of a home. The Bureau does not believe that the issues raised by these commenters provide sufficient justification to warrant the exercise of the Bureau's exception authority under TILA section 105(a) to provide a blanket exclusion of such payments from the calculation of points and fees. In addition, employers continue to have flexibility with regard to such arrangements. For example, commenters who raised this issue focused, in particular, on the impact of the Bureau's proposed comment on arrangements where the employer pays an employee's discount points in a transaction. However § 1026.32(b)(1)(i)(E) provides for an exclusion from points and fees of certain bona fide discount points, which would extend to any such discount points paid by a third-party employer.

With regard to creditor-paid charges, the Bureau is finalizing comment 32(b)(1)-2, which makes clear that "[c]harges that are paid by the creditor, other than loan originator compensation paid by the creditor that is required to be included in points and fees under § 1026.32(b)(1)(ii), are excluded from points and fees." This exclusion of creditor-paid charges therefore covers charges under §1026.32(b)(1)(iii)-(vi). The Bureau also believes that existing § 1026.4 and supporting commentary already address the treatment of creditor-paid charges for purposes of the finance charge under § 1026.32(b)(1)(i). For example, comment 4(a)-2 states that "[c]harges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such costs into consideration in determining the interest rate to be charged." The Bureau disagrees with commenters that suggested additional guidance is needed regarding creditor-paid charges beyond what already exists in Regulation Z and new comment 32(b)(1)-2, but for convenience is adding an express reference to comment 4(a)-2 to the Bureau's final 32(b)(1)-2 comment.

32(b)(1)(ii) and 32(b)(2)(ii)

A. Background

Section 1431(c)(1)(A) of the Dodd-Frank Act requires that points and fees include "all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source…." TILA section 103(bb)(4). The 2013 ATR Final Rule implemented this statutory provision in amended § 1026.32(b)(1)(ii), which provides that, for both the qualified mortgage points and fees limits and the high-cost mortgage points and fees threshold, points and fees include all compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to the transaction at the time the interest rate is set. The 2013 HOEPA Final Rule implemented § 1026.32(b)(2)(ii), which provides the same standard for including loan originator compensation in points and fees for open-end credit plans (*i.e.*, a home equity line of credit, or HELOC). Concurrent with the 2013 ATR Final Rule, the Bureau also issued the 2013 ATR Concurrent Proposal, which, among other things, proposed certain clarifications for calculating loan originator compensation for points and fees. The Bureau finalized the 2013 ATR Concurrent Proposal in the May 2013 ATR Final Rule, which further amended § 1026.32(b)(1)(ii) to exclude certain types of loan originator compensation from points and fees. In particular, the May 2013 ATR Final Rule excludes from points and fees loan originator compensation paid by a consumer to a mortgage broker when that payment has already been counted toward the points and fees thresholds as part of the finance charge under § 1026.32(b)(1)(i). *See* § 1026.32(b)(1)(ii)(A). It also excludes from points and fees compensation paid by a mortgage broker to an employee of the mortgage broker because that compensation is already included in points and fees as loan originator compensation paid by the consumer or the creditor to the mortgage broker. *See* § 1026.32(b)(1)(ii)(B). In addition, the

May 2013 ATR Final Rule excludes from points and fees compensation paid by a creditor to its loan officers. *See* § 1026.32(b)(1)(ii)(C).

The 2013 ATR Concurrent Proposal had requested comment on whether additional adjustment of the rules or additional commentary is necessary to clarify any overlapping definitions between the points and fees provisions in the 2013 ATR Final Rule and the 2013 HOEPA Final Rule and the provisions adopted by the 2013 Loan Originator Compensation Final Rule. In particular, the Bureau sought comment on whether additional guidance would be useful regarding persons who are "loan originators" under § 1026.36(a)(1) but are not employed by a creditor or mortgage broker, such as employees of a retailer of manufactured homes.

In response to the 2013 ATR Concurrent Proposal, several industry and nonprofit commenters requested clarification of what compensation must be included in points and fees in connection with transactions involving manufactured homes. First, they requested additional guidance on what activities would cause a manufactured home retailer and its employees to qualify as loan originators. This issue is addressed below in the section-by-section analysis of § 1026.36(a)(1).[29] Second, they requested additional guidance on what compensation paid to manufactured home retailers and their employees would be counted as loan originator compensation and included in points and fees. Industry commenters responding to the 2013 ATR Concurrent Proposal argued that it is not clear whether the sales price received by the retailer or the sales commission received by the retailer's employee should be considered, at least in part, loan originator compensation. They urged the Bureau to clarify that compensation paid

[29] As discussed below, the Bureau is clarifying what compensation must be included in points and fees. As discussed in the Supplementary Information describing revisions and clarifications to the rule text and commentary defining "loan originator," the Bureau is also clarifying the circumstances in which employees of manufactured home retailers are loan originators. In addition, the Bureau will continue to conduct outreach with the manufactured home industry and other interested parties to address concerns about what activities are permissible for a retailer and its employees without causing them to qualify as loan originators.

to a retailer and its employees in connection with the sale of a manufactured home should not be counted as loan originator compensation. Rather than provide additional guidance in the May 2013 ATR Final Rule, the Bureau instead decided to propose and seek comment on additional guidance.

B. Sections 32(b)(1)(ii)(D) and 32(b)(2)(ii)(D)

The Proposal

The Bureau proposed new § 1026.32(b)(1)(ii)(D), which would have excluded from points and fees all compensation paid by manufactured home retailers to their employees. The Bureau also proposed new § 1026.32(b)(2)(ii)(D), which would have provided that, for open-end credit plans, compensation paid by manufactured home retailers to their employees is excluded from points and fees for purposes of the high-cost mortgage points and fees threshold.

The Bureau noted that the May 2013 ATR Final Rule added § 1026.32(b)(1)(ii)(B), which excludes from points and fees compensation paid by mortgage brokers to their loan originator employees. The Bureau noted that it appeared that when an employee of a retailer would qualify as a loan originator, the retailer also would qualify as a loan originator and therefore would qualify as a mortgage broker. If the retailer qualifies as a mortgage broker, any compensation paid by the retailer to the employee would be excluded from points and fees under § 1026.32(b)(1)(ii)(B). The Bureau noted, however, that if there were instances in which an employee of a manufactured home retailer would qualify as a loan originator but the retailer would not, the exclusion from points and fees in § 1026.32(b)(1)(ii)(B) for compensation paid to an employee of a mortgage broker would not apply because the retailer would not be a mortgage broker. The Bureau suggested that it may still be appropriate to exclude such compensation paid to an employee of a manufactured home retailer because it may be difficult for creditors to determine whether employees of a manufactured home retailer have engaged in loan origination activities and, if so, what compensation they received for doing so. The Bureau noted that a retailer typically pays a sales commission to its employees, so it may be difficult for a creditor to know whether a retailer has paid any compensation to its employees for loan origination activities, as distinct from compensation for sales activities. To prevent any such uncertainty, the Bureau proposed new § 1026.32(b)(1)(ii)(D), to exclude from points and fees all compensation paid by manufactured home retailers to their employees. The Bureau requested comment on this proposed exclusion and on whether there are instances in which an employee of a manufactured home retailer would qualify as a loan originator but the retailer would not qualify as a loan originator.

In addition, to provide additional guidance on what compensation would be included in loan originator compensation that must be counted in points and fees for manufactured home transactions, the Bureau also proposed new comment 32(b)(1)(ii)-5. Proposed comment 32(b)(1)(ii)-5.i would have provided that, if a manufactured home retailer receives compensation for loan origination activities and such compensation can be attributed to the transaction at the time the interest rate is set, then such compensation is loan originator compensation that is included in points and fees. As noted in the May 2013 ATR Final Rule, the Bureau does not believe it is appropriate to use its exception authority to exclude from points and fees all compensation that may be paid to a manufactured home retailer. As a general matter, to the extent that the consumer or creditor is paying the retailer for loan origination activities, the retailer is functioning as a mortgage broker and compensation for the retailer’s loan origination activities should be captured in points and fees. Commenters did not address this proposed guidance, and the Bureau is therefore adopting it as proposed.[30]

Proposed comment 32(b)(1)(ii)-5.ii would have specified that the sales price of a manufactured home does not include loan originator compensation that can be attributed to the transaction at the time the interest rate is set and therefore is not included in points and fees.[31]

In proposing in comment 32(b)(1)(ii)-5.ii that the sales price of a manufactured home would not include compensation that must be included in points and fees, the Bureau indicated that it did not believe that the sales price would include compensation that is paid for loan origination activities and that can be attributed to a specific transaction. The Bureau noted that if a retailer does not increase the price to obtain compensation for loan origination activities, then it does not appear that the sales price would include loan originator compensation that could be attributed to that particular transaction.

The Bureau acknowledged that it is possible that the sales price could include loan originator compensation that could be attributed to a particular transaction at the time the interest rate is set and that therefore should be included in points and fees. The Bureau noted that one approach for calculating loan originator compensation for manufactured home transactions would be to compare the sales price in a transaction in which the retailer engaged in loan origination activities and the sales prices in transactions in which the retailer did not do so (such as in cash transactions or in transactions in which the consumer arranged credit through another party). To the extent that there is a higher sales price in the transaction in which the retailer

[30] As addressed below in the discussion of § 1026.36(a), several industry commenters argued that the Bureau should clarify and narrow the scope of activities that would cause a manufactured home retailer and its employees to qualify as loan originators.

[31] As noted above, the Bureau is adopting as proposed comment 32(b)(1)(ii)-5.iii, which specifies that, consistent with new § 1026.32(b)(1)(ii)(D), compensation paid by a manufactured home retailer to its employees is not included in points and fees.

engaged in loan origination activities, then the difference in sales prices could be counted as loan originator compensation that can be attributed to that transaction and that therefore should be included in points and fees.

However, the Bureau stated that it did not believe that it would be workable to use this comparative sales price approach to determine whether the sales price includes loan originator compensation that must be included in points and fees. The creditor is responsible for calculating loan originator compensation to be included in points and fees for the qualified mortgage and high-cost mortgage points and fees thresholds. The Bureau noted that, under the comparative sales price approach, the creditor would have to analyze a manufactured home retailer's prices to determine if there were differences in the prices that would have to be included in points and fees as loan originator compensation. This would appear to be an extremely difficult analysis for the creditor to perform. Not only would the creditor have to compare the sales prices from numerous transactions, it would have to determine whether any differences between the sales prices could be attributed to the loan origination activities of the retailer and not to other factors.

The Bureau requested comment on the proposed guidance specifying that the sales price does not include loan originator compensation that can be attributed to the transaction at the time the interest rate is set. In addition, the Bureau requested comment on whether the sales price of a manufactured home does in fact include loan originator compensation that can be attributed to the transaction at the time the interest rate is set, and, if so, whether there are practicable ways for a creditor to measure that compensation so that it could be included in points and fees.

Comments

The Bureau received few comments that addressed proposed § 1026.32(b)(1)(ii)(D). Two industry commenters generally supported the proposal. Consumer advocates did not comment on this issue.

With respect to new comment 32(b)(1)(ii)-5, industry commenters supported the Bureau's proposed guidance. They maintained that the sales price of a manufactured home does not include loan originator compensation and that, in any event, it would not be possible for the creditor to determine if the sales price did include any such compensation.

Consumer advocates, however, opposed the proposed comment. They argued that retailers could easily conceal loan originator compensation in the sales price by inflating the price above what a cash customer would pay. They contended that it is difficult to determine the equivalent cash price for manufactured homes because most sales are on credit and, because of the variety of options, there are not standard cash prices for particular models. They stated that the Manufacturer's Suggested Retail Price (MSRP) is not a reliable measure because it often does not include many options that are included with the sale and because the close relationships between many lenders, dealers, and manufacturers create an incentive to inflate MSRPs. They recommended that the commentary should instead provide that any originator compensation concealed in the sales price should be included in points and fees.

Final Rule

For the reasons noted above, the Bureau is adopting new § 1026.32(b)(1)(ii)(D) and (b)(2)(ii)(D) as proposed. As discussed below, the Bureau is also adopting, with revisions, comment 32(b)(1)(ii)-5, which, among other things, explains in comment 32(b)(1)(ii)-5.iii, that consistent with § 1026.32(b)(1)(ii)(D), compensation paid by a manufactured home retailer to its employees is not included in points and fees. The Bureau notes, however, that it does not acknowledge that situations exist where a manufactured housing retailer's employee is considered a loan originator, but the retailer itself is not.

As discussed in the proposal, the Bureau is using its exception authority to adopt new § 1026.32(b)(1)(ii)(D) and (b)(2)(ii)(D) pursuant to its authority under TILA section 105(a) to make such adjustments and exceptions for any class of transactions as the Bureau finds necessary or proper to facilitate compliance with TILA and to effectuate the purposes of TILA, including the purposes of TILA section 129C of ensuring that consumers are offered and receive residential mortgage loans that reasonably reflect their ability to repay the loans. The Bureau's understanding of this purpose is informed by the findings related to the purposes of section 129C of ensuring that responsible, affordable mortgage credit remains available to consumers. The Bureau believes that using its TILA exception authorities will facilitate compliance with the points and fees regulatory regime by not requiring creditors to investigate the manufactured housing retailer's employee compensation practices, and by making sure that all creditors apply the provision consistently. It will also effectuate the purposes of TILA by helping to keep mortgage loans available and affordable by ensuring that they are subject to the appropriate regulatory framework with respect to qualified mortgages and the high-cost mortgage threshold. The Bureau is also invoking its authority under TILA section 129C(b)(3)(B) to revise, add to, or subtract from the criteria that define a qualified mortgage consistent with applicable standards. For the reasons explained above, the Bureau has determined that it is necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C and necessary and appropriate to effectuate the purposes of this section and to facilitate compliance with section 129C. With respect to its use of TILA section 129C(b)(3)(B), the Bureau believes this authority includes adjustments and exceptions to the definitions of the criteria for qualified mortgages and that it is consistent with the purpose of facilitating compliance to extend use of this authority to the points and fees definitions for high-cost mortgage in order to preserve the consistency of the qualified mortgage and high-cost mortgage definitions. As noted above, by helping to ensure that the points and fees calculation is not artificially inflated, the Bureau is helping to ensure that responsible, affordable mortgage credit remains available to consumers.

The Bureau also has considered the factors in TILA section 105(f) and has concluded that, for the reasons discussed above, the exemption is appropriate under that provision. Pursuant to TILA section 105(f), the Bureau may exempt by regulation from all or part of this title all or any class of transactions for which in the determination of the Bureau coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. In determining which classes of transactions to exempt, the Bureau must consider certain statutory factors. For the reasons discussed above, the Bureau is excluding from points and fees compensation paid by a retailer of manufactured homes to its employees because including such compensation in points and fees does not provide a meaningful benefit to consumers. The Bureau believes that the exemption is appropriate for all affected consumers to which the exemption applies, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the exemption is appropriate for all affected loans covered under the exemption, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection, denying important benefits to consumers, or increasing the expense of the credit process.

The Bureau notes that it is permitting creditors to exclude from points and fees compensation paid to a manufactured home retailer's employees only where that compensation is paid by the retailer. To the extent that an employee of a manufactured home retailer receives from another source (such as the creditor) loan originator compensation that can be attributed to the transaction at the time the interest rate is set, then that compensation must be included in points and fees.

The Bureau is adopting a modified version of comment 32(b)(1)(ii)-5 in light of comments from consumer groups. The Bureau is concerned that, as noted by consumer advocates, it is possible that the sales price of a manufactured home could include loan originator compensation. In particular, the Bureau is concerned that creditors and manufactured home retailers could work together to conceal loan originator compensation in the sales price. As a result, the Bureau does not believe that it can determine by rule that the sales price of a manufactured home does not include loan originator compensation that must be included in points and fees.

However, no commenters proposed a practicable method for creditors to determine whether the sales price of a manufactured home does in fact include loan originator compensation that can be attributed to the transaction at the time the interest rate is set. As the Bureau noted in the proposal, the Bureau does not believe that it is workable for the creditor to attempt to compare sales prices in different transactions to try to determine if the sales price includes loan originator compensation that must be included in points and fees.

Because the Bureau's primary concern is that creditors and manufactured home retailers could work together to conceal loan originator compensation in the sales price, the Bureau is adopting new guidance that focuses on the knowledge of the creditor. Specifically, the Bureau is revising proposed comment 32(b)(1)(ii)-5.ii to provide that, if the creditor has knowledge that the sales price of a manufactured home includes loan originator compensation, then that compensation must be included in points and fees. The creditor does not, however, have an obligation to investigate the retailer's sales prices to determine if the sales price includes such compensation.

This approach is consistent with the current rules for calculating points and fees and the amount of loan originator compensation that must be included in points and fees. Under § 1026.32(b)(1), amounts must be included in points and fees only if they are "known at or before consummation." Under § 1026.32(b)(1)(ii), loan originator compensation is included in points and fees only if it can be attributed to the transaction at the time the interest rate is set. In general, the Bureau does not believe that many creditors will know whether the sales price of a manufactured home includes loan originator compensation, and therefore would not be able to attribute any such compensation to the transaction at the time the interest rate is set. However, to the extent that, for example, a creditor and a retailer establish an arrangement in which the sales price of a manufactured home includes loan originator compensation, then the creditor would have knowledge that the sales price includes loan originator compensation and would have to include such compensation in points and fees. The Bureau believes that this approach will balance the goals of ensuring that creditors and retailers not evade the points and fees limits by working together to conceal loan originator compensation in the sales price and of avoiding a standard that would impose an unreasonable burden on creditors to investigate the pricing of manufactured home retailers.

32(b)(1)(vi) and 32(b)(2)(vi)

The Proposal

The Bureau proposed clarifying changes to § 1026.32(b)(1)(vi) and (b)(2)(vi) to better harmonize the definitions of "total prepayment penalty" adopted in these two sections more fully with the statutory requirement implemented by them. Sections 1026.32(b)(1)(vi) and (2)(vi) implement TILA section 103(bb)(4)(F), as added by section 1431(c) of the Dodd-Frank Act. That provision requires that points and fees include "all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor." Section 1026.32(b)(1)(vi), as adopted by the 2013 ATR Final Rule, implemented this provision as it related to closed-end credit transactions, and provided that points and fees must include "[t]he total prepayment penalty, as defined in paragraph (b)(6)(i) of this section, incurred by the consumer if the consumer refinances the existing mortgage loan with the current holder of the existing loan, a servicer acting on behalf of the current holder, or an affiliate of either." Section 1026.32(b)(2)(vi), as adopted by the 2013 HOEPA Final Rule, implemented this provision as it related to open-end credit plans (*i.e.*, a home equity line of credit, or HELOC), and provided that points and fees must include "[t]he total prepayment penalty, as defined in paragraph (b)(6)(ii) of this section, incurred by the consumer if the consumer refinances an existing closed-end credit transaction with an open-end credit plan, or terminates an existing open-end credit plan in connection with obtaining a new closed- or open-end credit transaction, with the current holder of the existing plan, a servicer acting on behalf of the current holder, or an affiliate of either."

The Bureau proposed changes to § 1026.32(b)(1)(vi) and (2)(vi) to clarify both provisions' application. In doing so the Bureau stated that it intended these provisions to work in the same manner for closed-end and open-end credit transactions—*i.e.*, to include in points and fees any prepayment charges triggered by the refinancing of an existing loan or termination of a

HELOC by obtaining a new credit transaction with the current holder of the existing closed-end mortgage loan or open-end credit plan. The Bureau, therefore, proposed to state expressly that § 1026.32(b)(1)(vi) applies to instances where the consumer takes out a closed-end mortgage loan to pay off and terminate an existing open-end credit plan held by the same creditor and the plan imposes a prepayment penalty (as defined in § 1026.32(b)(6)(ii)) on the consumer. The Bureau also proposed to strike from the existing § 1026.32(b)(2)(vi) the reference to obtaining a new closed-end credit transaction because § 1026.32(b)(2)(vi) relates to points and fees only for open-end credit plans and § 1026.32(b)(1)(vi) would apply instead. The Bureau also proposed to insert in § 1026.32(b)(2)(vi) a reference to § 1026.32(b)(6)(i), the definition of prepayment penalties for closed-end credit transactions, to clarify that the § 1026.32(b)(6)(i) definition applies in calculating the prepayment penalties included where a consumer refinances a closed-end mortgage loan with a HELOC with the creditor holding the closed-end mortgage loan (*i.e.*, the closed-end mortgage loan's prepayment penalties are included in calculating points and fees for the HELOC).

Comments

The Bureau did not receive comments specific to these proposed changes.

Final Rule

The Bureau is adopting the changes to § 1026.32(b)(1)(vi) and (2)(vi) as proposed. The Bureau believes that these changes are consistent with the statutory provision implemented by this section and provide needed clarification to the Bureau's intended application of § 1026.32(b)(1)(vi) and (2)(vi). In addition, the Bureau also is adopting as proposed comment 32(b)(2)-1, which directs readers for further guidance on the inclusion of charges paid by parties other than the consumer in points and fees for open-end credit plans to proposed comment 32(b)(1)-2 on closed-end credit transactions.

32(d) Limitations

32(d)(1)

32(d)(1)(ii) Exceptions

32(d)(1)(ii)(C)

The Proposal

The Bureau proposed to revise the exception to the prohibition on balloon payments for high-cost mortgages in § 1026.32(d)(1)(ii)(c) for transactions that satisfy the criteria set forth in § 1026.43(f), which implements TILA section 129C(b)(2)(E) as added by the Dodd-Frank Act provision, allows certain balloon-payment mortgages made by small creditors operating predominantly in "rural or underserved areas" to be accorded status as qualified mortgages under § 1026.43(f). The HOEPA balloon exception is based on the same statutory provision, which appears to have been designed to promote access to credit. TILA section 129C as added by the Dodd-Frank Act generally prohibits balloon-payment loans from being accorded qualified mortgage status, but Congress appears to have been concerned that small creditors in rural areas might have sufficient difficulty converting from balloon-payment loans to adjustable rate mortgages that they would curtail mortgage lending if they could not obtain qualified mortgage status for their balloon-payment loans. As adopted in § 1026.43(f) by the 2013 ATR Final Rule, the exemption is available to creditors that extended more than 50 percent of their total covered transactions secured by a first lien in "rural" or "underserved" counties during the preceding calendar year, as those terms are defined in § 1026.35(b)(2)(iv)(A) and (B), respectively.

Because commenters raised similar concerns about the prohibition in HOEPA on high-cost mortgages having balloon-payment features, the Bureau decided in the 2013 HOEPA Final Rule to adopt § 1026.32(d)(1)(ii)(C) to allow balloon-payment features on loans that met the qualified mortgage requirements. The Bureau stated that, in its view, (1) allowing creditors in certain rural or underserved areas to extend high-cost mortgages with balloon payments will benefit consumers by expanding access to credit in these areas, and also will facilitate compliance for creditors who make these loans; and (2) allowing creditors that make high-cost mortgages in rural or underserved areas to originate loans with balloon payments if they satisfy the same criteria promotes consistency between the 2013 HOEPA Final Rule and the 2013 ATR Final Rule, and thereby facilitates compliance for creditors that operate in these areas.

Since publication of the 2013 HOEPA Final Rule and the 2013 ATR Final Rule, the Bureau received extensive comment on the definitions of "rural" and "underserved" that it adopted for purposes of § 1026.43(f) and certain other purposes in the 2013 Title XIV Final Rules, including § 1026.32(d)(1)(ii)(C). In light of these comments, the Bureau added § 1026.43(e)(6) to allow small creditors during the period from January 10, 2014, to January 10, 2016, to make balloon-payment qualified mortgages even if they do not operate predominantly in rural or underserved areas.[32] In addition, the Bureau announced that it would reexamine those

[32] Specifically, in the May 2013 ATR Final Rule, the Bureau adopted § 1026.43(e)(6), which provided for a temporary balloon-payment qualified mortgage that requires all of the same criteria be satisfied as the balloon-payment qualified mortgage definition in § 1026.43(f) except the requirement that the creditor extend more than 50 percent of its total first-lien covered transactions in counties that are "rural" or "underserved." This temporary balloon-payment qualified mortgage would sunset, however, after January 10, 2016. As discussed in the section-by-section analysis of § 1026.43(e)(6) in the May 2013 ATR Final Rule, the Bureau adopted this two-year transition period for small creditors to roll over existing balloon-payment loans as qualified mortgages, even if they do not operate predominantly in rural or underserved areas, because the Bureau believes it is necessary to preserve access to responsible, affordable mortgage credit for some consumers. The Bureau also noted that, during the two-year period for which § 1026.43(e)(6) is in place, the Bureau intends to review whether the definitions of "rural" and "underserved" should be adjusted further and to explore how it can best facilitate the transition of small creditors that do not operate predominantly in rural or underserved areas from balloon-payment loans to adjustable-rate mortgages. 78 FR 35430 (June 12, 2013).

definitions over the next two years to determine whether further adjustments are appropriate particularly in light of access to credit concerns.[33]

In light of the Bureau's decision to allow small creditors an additional two years to transition from balloon-payment loans to other products while it reevaluates the definitions of "rural" and "underserved," the Bureau also proposed revisions to § 1026.32(d)(1)(ii)(c) to also allow small creditors to carry over the flexibility provided by the revised May 2013 ATR Final Rule into the HOEPA balloon loan provisions. The proposal would have revised § 1026.32(d)(1)(ii)(C) to expand the exception to the prohibition on balloon payments for high-cost mortgages for transactions that satisfy the criteria in either § 1026.43(f) or § 1026.43(e)(6). The Bureau sought comment on this aspect of the proposal.

Comments

The Bureau received substantial comments from trade associations, credit unions, and other industry advocates supporting the proposed amendments. Specifically, many of these commenters commended the Bureau for facilitating compliance with the balloon payment restrictions adopted by the 2013 HOEPA Final Rule, especially with respect to small creditors whose communities technically fail to meet the Bureau's definition of "rural" because they lie within the boundaries of micropolitan statistical areas. These commenters noted that the ability to originate mortgages with balloons is important to small creditors, who often have unique product pricing risks and also commonly do not have adequate staff or training to produce the additional disclosures required by adjustable-rate mortgages. The Bureau received one comment from a housing counseling organization that disagreed with the proposed expansion of the

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[33] *See, e.g.,* U.S Consumer Fin Prot. Bureau, *Clarification of the 2013 Escrows Final Rule* (May 16, 2013), *available at* http://www.consumerfinance.gov/blog/clarification-of-the-2013-escrows-final-rule/.

exemption, but the commenter raised no specific issues with the proposal. Rather the commenter disagreed in general with the original exception adopted by the 2013 HOEPA Final Rule on the premise that it believes balloon high-cost mortgages should never be permitted under any circumstances.

Final Rule

The Bureau is adopting revised § 1026.32(d)(1)(ii)(c) as proposed. The Bureau is expanding this exception pursuant to its authority under TILA section 129(p)(1), which grants it authority to exempt specific mortgage products or categories from any or all of the prohibitions specified in TILA section 129(c) through (i) if the Bureau finds that the exemption is in the interest of the borrowing public and will apply only to products that maintain and strengthen homeownership and equity protections.

The Bureau believes expanding the balloon-payment exception for high-cost mortgages to allow certain small creditors operating in areas that do not qualify as “rural” or “underserved” to continue to originate high-cost mortgages with balloon payments is in the interest of the borrowing public and will strengthen homeownership and equity protection. The Bureau believes allowing greater access to credit in remote areas that nevertheless may not meet the definitions of “rural” or “underserved” while creditors transition to adjustable-rate mortgages (or the Bureau reconsiders those definitions) will help those consumers who otherwise may be able to obtain credit only from a limited number of creditors. Further, it will do so in a manner that balances consumer protections with access to credit. In the Bureau’s view, concerns about potentially abusive practices that may accompany balloon payments will be curtailed by the additional requirements set forth in § 1026.43(e)(6) and (f). Creditors that make these high-cost mortgages will be required to verify that the loans also satisfy the additional criteria discussed above, including some specific criteria required for qualified mortgages. Further, creditors that make balloon-payment high-cost mortgages under this exception will be required to hold the high-cost mortgages in portfolio for a specified time, which the Bureau believes also decreases the risk of abusive lending practices. Accordingly, for these reasons and for the purpose of consistency between the two rules, the Bureau is adopting an exception to the § 1026.32(d)(1) balloon-payment restriction for high-cost mortgages where the creditor satisfies the conditions set forth in §§ 1026.43(f) or the conditions set forth in § 1026.43(e)(6).

Section 1026.35 Requirements for Higher-Priced Mortgage Loans

35(b) Escrow Accounts

35(b)(2) Exemptions

35(b)(2)(iii)

35(b)(2)(iii)(A)

The Proposal

In addition to the HOEPA and ATR balloon provisions discussed above, the definitions of “rural” and “underserved” also relate to the § 1026.35(b)(2)(iii) exemption from the requirement that creditors establish escrow accounts for certain higher-priced mortgage loans available to small creditors that operate predominantly in “rural” or “underserved” areas. The exemption in § 1026.35(b)(2)(iii) was designed to promote access to credit by exempting small creditors in rural or underserved areas that might have sufficient difficulty maintaining escrow accounts that they would curtail making higher-priced mortgage loans rather than trigger the escrow account requirement. As adopted in the 2013 Escrows Final Rule, and as amended by the May 2013 Escrows Final Rule,[34] the exemption is available to creditors that extended more than

[34] 78 FR 30739 (May 23, 2013).

50 percent of their total covered transactions secured by a first lien on properties that are located in “rural” or “underserved” counties during the preceding calendar year. In general, a county’s status as “rural” is defined in relation to Urban Influence Codes (UICs) established by the United States Department of Agriculture’s Economic Research Service.

Because of updated information from the 2010 Census, however, numerous counties’ status under the Bureau’s definition will change between 2013 and 2014, with a small number of new counties meeting the definition of “rural” and approximately 82 counties no longer meeting that definition. The Bureau estimates that approximately 200-300 otherwise eligible creditors during 2013 could lose their eligibility for 2014 solely because of changes in the status of the counties in which they operate (assuming the geographical distribution of their mortgage originations does not change significantly over the relevant period).[35]

In light of the Bureau’s intent to review whether the definitions of “rural” and “underserved” should be adjusted further during the two-year transition period for balloon-payment mortgages discussed above, the Bureau proposed to revise the exemption provided by § 1026.35(b)(2)(iii) to the general requirement that creditors establish an escrow account for first lien higher-priced mortgage loans where a small creditor operates predominantly in rural or underserved areas and meets various other criteria. The proposal would have revised § 1026.35(b) and its commentary to minimize volatility in the definitions while they are being re-evaluated. The proposal also would have amended § 1026.35(b)(2)(iii)(D)(*1*) and its

[35] The extent of such volatility in the transition from 2012 rural/non-rural status (for purposes of eligibility for the exemption during 2013) to 2013 rural/non-rural status (for purposes of eligibility for the exemption during 2014) is likely far greater than during other year-to-year transitions. This is due to the fact that this first year-to-year transition under the Bureau’s “rural” definition happens to coincide with the redesignation by the USDA’s Economic Research Service of U.S. counties’ urban influence codes, on which the “rural” definition is generally based. This redesignation occurs only decennially, based on the most recent census data. Nevertheless, for purposes of eligibility for the exemption during 2013 and 2014, the volatility is significant—just as creditors are first attempting to apply the exemption’s criteria.

commentary to conform to the expansion of the exemption to creditors that may meet the § 1026.35(b)(2)(iii)(A) criteria for calendar year 2014 based on loans made in "rural" or "underserved" counties in calendar year 2011, but not 2012 or 2013.

The Bureau sought comment on these proposed amendments and also proposed an effective date for the amendments that would apply to transactions where applications were received on or after January 1, 2014, in light of the proposed change to the calendar year exemption under § 1026.35(b)(2)(iii).

Comments

The Bureau received substantial comments from trade associations, credit unions, and other industry advocates supporting the proposed amendments. Many of the comments relating to the amendments to § 1026.32(d)(1)(ii)(A) discussed above also discussed the amendments to § 1026.35(b)(2)(iii) and offered similar or identical comments commending the Bureau for facilitating compliance with the requirements adopted by the 2013 Escrow Final Rule, particularly in light of changes to "rural" status for certain counties based on the last available Census data that would have caused certain creditors to lose eligibility for the exemption. The same housing counseling organization that disagreed with the balloon exception adopted by the 2013 HOEPA Final Rule also disagreed with the original exemption from the escrows requirement and thus also the proposed expansion. As before, this commenter did not raise any specific issues related to the proposal, but rather stated that all higher-priced mortgage loans should be escrowed, without exception. As discussed in part V above, while nearly all comments supported the proposal in general, no comments expressly addressed the January 1, 2014 effective date.

Final Rule

The Bureau is adopting revised § 1026.35(b)(2)(iii)(A) as proposed. The amended provision provides that, to qualify for the exemption, a creditor must have extended more than 50 percent of its total covered transactions secured by a first lien on properties located in "rural" or "underserved" counties during any of the preceding three calendar years. The provision thus prevents a creditor from losing eligibility for the exemption under the "rural or underserved" element of the test unless it has failed to exceed the 50-percent threshold three years in a row.

As discussed above in the section-by-section analysis of § 1026.32(d)(1)(ii)(C), the Bureau also is modifying the exception from the prohibition on balloon payments for high-cost mortgages in that section. Section 1026.32(d)(1)(ii)(C) provides an exception to the general prohibition on balloon payments for high-cost mortgages for balloon-payment qualified mortgages made by certain creditors operating predominantly in "rural" or "underserved" areas. Believing that the same rationale for allowing balloon-payment qualified mortgages made by creditors in rural or underserved areas applies to high-cost mortgages, the Bureau adopted the § 1026.32(d)(1)(ii)(C) exception in the 2013 HOEPA Final Rule. As explained above, the Bureau believes the same underlying rationale for the two-year transition period for balloon-payment qualified mortgages described above applies equally to the § 1026.32(d)(1)(ii)(C) exception from the high-cost mortgage balloon prohibition. Accordingly, the Bureau believes it is appropriate to extend this temporary framework to § 1026.32(d)(1)(ii)(C) and therefore is amending § 1026.32(d)(1)(ii)(C) to include loans meeting the criteria under § 1026.43(e)(6). Thus, for both balloon-payment qualified mortgages and for the high-cost mortgage balloon prohibition, the Bureau has adopted a two-year transition period during which the special treatment of balloon-payment loans does not depend on the creditor operating predominantly in rural or underserved areas.

The Bureau considered taking the same approach with regard to the escrow requirement but concluded ultimately that a smaller adjustment was appropriate. Because higher-priced mortgage loans are already subject to an escrow requirement, all creditors are currently required to maintain escrow accounts for such loans. Implementation of the amendments to the exemption will thus reduce burden for some creditors, but does not impose different requirements than the status quo except as to the length of time that an escrow account must be maintained. This is fundamentally different than the ability-to-repay and high-cost mortgage requirements, which would prohibit new balloon-payment loans from being accorded qualified mortgage status or from being made going forward absent implementation of the special exemptions. In addition, the Bureau may change the definitions of rural or underserved areas as the result of its re-examination process but does not anticipate lifting the requirement that creditors operate predominantly in rural or underserved areas to qualify for the exemption because Congress specifically contemplated that limitation on the escrows exemption. Accordingly, the Bureau believes it is appropriate to leave the definition in place, but to prevent volatility in the definition from negatively affecting creditors while the Bureau re-evaluates the underlying definitions. The Bureau believes that, as with the two balloon-payment provisions for which the Bureau believes two-year transition periods are appropriate, this amendment will benefit consumers by expanding access to credit in certain areas that met the definitions of "rural" or "underserved" at some time in the preceding three calendar years and also will facilitate compliance for creditors that make these loans. The Bureau also believes that the amendment will promote additional consistency between the regulatory provisions adopted by the 2013 HOEPA Final Rule, the 2013 ATR Final Rule, and the 2013 Escrows Final Rule, thereby facilitating compliance for affected creditors.

The Bureau notes that the mechanics of § 1026.35(b)(2)(iii)(A) differ slightly from the express transition period ending on January 10, 2016, under § 1026.43(e)(6). Thus, this amendment does not parallel the same transition period precisely, as does revised § 1026.32(d)(1)(ii)(C), which simply incorporates § 1026.43(e)(6)'s conditions by cross-reference. Instead, revised § 1026.35(b)(2)(iii)(A) approximates a two-year transition period by extending from one to three years the time for which a creditor, once eligible for the exemption, cannot lose that eligibility because of changes in the rural (or underserved) status of the counties in which the creditor operates. Because the 2013 Escrows Final Rule took effect on June 1, 2013, the escrows provisions already have begun operating over seven months earlier than the provisions adopted by the 2013 HOEPA and ATR Final Rules (which take effect on January 10, 2014). Thus, whereas the two balloon-payment provisions specifically last through January 10, 2016, the escrows-requirement exemption will guarantee eligibility (for a creditor that is eligible during 2013 with respect to operating predominantly in rural or underserved areas, and meets the other applicable criteria) through 2015. Thus, the revised § 1026.35(b)(2)(iii) exemption will approximately, though not exactly, track the extension of the balloon exemption for qualified mortgages under § 1026.43(e)(6), and the extension of the HOEPA balloon exemption under revised § 1026.32(d)(1)(ii)(C).

In addition to the changes discussed above, the Bureau also is amending § 1026.35(b)(2)(iii)(D)(*1*) and its commentary to conform to the expansion of the exemption to creditors that may meet the section 35(b)(2)(iii)(A) criteria for calendar year 2014 based on loans made in "rural" or "underserved" counties in calendar year 2011, but not 2012 or 2013. Section § 1026.35(b)(2)(iii)(D)(*1*) currently prohibits any creditor from availing itself of the exemption if it maintains escrow accounts for any extensions of consumer credit secured by real property or a dwelling that it or its affiliate currently service, unless the escrow accounts were established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before June 1, 2013, or were established after consummation as an accommodation for distressed consumers. With respect to loans where escrows were established on or after April 1, 2010, and before June 1, 2013, the Supplementary Information to the 2013 Escrows Final Rule explained that the Bureau believes creditors should not be penalized for compliance with the then current regulation, which would have required any such loans to be escrowed after April 1, 2010, and prior to June 1, 2013—the date the exemption took effect. The Bureau understands that creditors that did not make more than 50 percent of their first-lien higher-priced mortgage loans in “rural” or “underserved” counties in calendar year 2012 would have been ineligible for the exemption for calendar year 2013, and thus would have been required under § 1026.35(a) to establish escrow accounts for any higher-priced mortgage loans those creditors made after June 1, 2013. However, it is possible in light of the amendments the Bureau is adopting that some of these same creditors may have met this criteria during calendar year 2011—and thus, because the Bureau is finalizing the proposal and allowing creditors to qualify for the exemption (assuming they satisfy the other conditions set forth in § 1026.35(b)(2)(iii)(B), (C), and (D))—such creditors will qualify for the exemption in 2014. However, absent additional clarification, there would be one barrier: For applications received on or after June 1, 2013, but before the date the proposed amendment takes effect (as proposed, January 1, 2014), such a creditor that made a first-lien higher-priced mortgage loan would have been required to escrow for that loan, and thus would be deemed ineligible under § 1026.35(b)(2)(iii)(D). The Bureau does not believe that such creditors should lose the exemption because they were ineligible prior to the proposed amendment taking effect and thus made loans with escrows from June 1, 2013, through

December 31, 2013. As the Bureau discussed in the Supplementary Information to the 2013 Escrows Final Rule, the Bureau believes creditors should not be penalized for compliance with the current regulation. The Bureau thus believes it is appropriate to amend § 1026.35(b)(2)(iii)(D)(*1*) and comment 35(b)(2)(iii)(D)(*1*)-1.iv to exclude escrow accounts established after April 1, 2010 and before January 1, 2014.

In addition, the Bureau is revising comment 35(b)(2)(iii)(D)(*1*)-1.iv to clarify that the date ranges provided in § 1026.35(b)(2)(iii)(D)(*1*) apply to transactions for which creditors received applications on or after April 1, 2010, and before January 1, 2014. As discussed above, the Bureau believes such creditors should still qualify for the exemption provided under § 1026.35(b)(2)(iii) so long as they do not establish new escrow accounts for transactions for which they received applications on or after January 1, 2014, other than those described in § 1026.35(b)(2)(iii)(D)(*2*), and they otherwise qualify under § 1026.35(b)(2)(iii). The Bureau believes this clarification reflects both the manner in which the 2013 Escrows Rule originally applied to transactions and the applicability of this final rule.

Section 1026.36 Loan Originator Compensation

36(a) Definitions

Section 1026.36(a) defines the term "loan originator" for purposes of § 1026.36 as a person[36] who, for or in expectation of direct or indirect compensation or other monetary gain, engages in a defined set of activities or services (unless otherwise excluded). Section 1026.36(a) describes these activities broadly to include any such person who "takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other

[36] "Person" is defined in § 1026.2(a)(22) to mean, "a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit."

means of communication represents to the public that such person can or will perform any of these activities." Commentary to § 1026.36(a) further describes and provides illustrations of these activities, including how the practice of "referring" consumers to creditors or loan originators, may affect one's status under the section.

Following publication of the 2013 Loan Originator Compensation Final Rule, the Bureau received numerous inquiries from industry regarding the activities that, if done for compensation or gain, would cause a person to be classified as a "loan originator" under § 1026.36. As discussed below, many of these inquiries sought clarification regarding specific terms used throughout the section, such as "credit terms," or guidance on how the provision may apply to certain loan originator or creditor employees, agents or contractors such as tellers and greeters, as well as other interpretive questions. In response, the Bureau proposed several amendments to § 1026.36(a) and associated commentary adopted by the 2013 Loan Originator Compensation Final Rule to resolve inconsistencies in wording, to conform the comments to the intended operation of the regulation text, and to address issues raised during the regulatory implementation process. The Bureau proposed these changes pursuant to its TILA section 105(a) and Dodd-Frank Act section 1022(b)(1) authority. As discussed below, the Bureau is adopting most of these amendments as proposed with some revisions and additional clarifying amendments.

The Bureau also proposed to revise comments 36(a)-4.i and 36(a)-4.ii.B to clarify those provisions' application to loan originator or creditor agents and contractors as well as employees. The Bureau is not adopting this aspect of the proposal. As discussed below, comments 36(a)-4.i and 36(a)-4.ii.B illustrate two situations where an employee of a creditor or loan originator is conducting "in house" activity for his or her employer that is not considered to be "referring":

(1) Handing applications from the employer to a consumer; and (2) providing loan originator or creditor contact information for the loan originator or creditor entity for which the person works, or a person that works for the same entity. The Bureau proposed to clarify that comments 36(a)-4.i and 36(a)-4.ii.B may be available to certain persons who work for creditors or loan originators, but may not technically be "employed" by the loan originator or creditor organization—*i.e.*, contract employees, temporary employees, interns, or other persons who may be working on a voluntary basis or being paid by another entity. However, upon further consideration, the Bureau believes the terms "agent" and "contractor" could be interpreted more broadly than the Bureau intended to include independent contractors or agents used by loan originators or creditors to refer customers to that loan originator or creditor. The Bureau did not intend these provisions to be applied this broadly, and also is concerned that such a reading could be inconsistent with other applicable laws, such as RESPA's prohibition on referral fees for federally related mortgages. Accordingly, the Bureau is limiting the scope of this comment to employees of loan originators or creditors.

The Bureau notes, however, that this does not mean these provisions may never be available to certain persons who may possibly be considered agents or contractors, such as temps or contract employees. While these provisions are limited to employees of creditors or loan originators, § 1026.2(b)(3) states that any terms not defined by Regulation Z is given the meanings given to them by State law or contract. The Bureau believes the term "employee"—which is not defined under Regulation Z—is commonly defined under State law as well as employment contracts, and may extend to such persons in appropriate circumstances.

A. References to Credit Terms.

The Proposal

The Bureau proposed to amend § 1026.36(a) and its commentary to clarify the meaning of "credit terms," which is used in defining some of the exclusions to the general definition of "loan originator," thereby further delineating the general definition. For example, as adopted by the 2013 Loan Originator Compensation Final Rule, § 1026.36(a)(1)(i)(A) allows persons who act as assistants to loan originators to perform clerical or administrative tasks on a loan originator's behalf without becoming loan originators themselves. To be eligible for the exclusion, however, the person must not, among other things, offer or negotiate "credit terms available from a creditor."

Similarly, comment 36(a)-4.i. explains when providing a consumer with a credit application, an activity that would otherwise be a referral, does not cause a person to be classified as a loan originator. This comment provides an exception to certain persons who, among other things, do not discuss "specific credit terms or products available from a creditor with the consumer."

In addition, comment 36(a)-4.ii.B explains when a loan originator's or creditor's employee, such as a teller or greeter, may engage in providing loan originator contact information to consumers, an activity that would otherwise be a referral, without being classified as a loan originator. This comment provides that the definition of loan originator does not include a creditor's or loan originator's employee who provides loan originator or creditor contact information to a consumer, provided the employee does not, among other things, "discuss particular credit terms available from a creditor." *See also* § 1026.36(a)(1)(i)(B) and comments 36(a)-1.i.A.*2* through -1.i.A.*4* (other similar references to credit terms). This exclusion also assists in defining persons who are loan originators in the sense that it implies persons who do discuss specific or particular credit terms, as this activity is further clarified in this rule, would be included in the definition.

Following publication of the 2013 Loan Originator Compensation Final Rule, the Bureau received numerous inquiries from loan originators and creditors seeking guidance on the meaning of "credit terms" in these various contexts. In light of these inquiries, the Bureau was concerned that the term "credit terms" could have been construed too broadly and in a manner that could render any person that provides such general information a loan originator, which was not the Bureau's intent. Rather, the Bureau generally intended the references to "credit terms" throughout § 1026.36(a) to refer to particular credit terms that are or may be made available *to the consumer* selected based on the consumer's financial characteristics. Distinct from such particular credit terms are general credit terms that a loan originator or creditor makes available and advertises to the public at large, such as where such person merely states: "We offer rates as low as 3% to qualified consumers."

To address these questions, the Bureau proposed to clarify usage of the term "credit terms" throughout the section in several ways. First, the Bureau noted that the definition of "credit terms," which explains the term includes rate, fees, and other costs, had been provided only by a parenthetical clause in § 1026.36(a)(1)(i)(B) (a single exclusion that relates to retailers of manufactured homes) rather than in a separate, definitional provision. Thus, the definition appears to be limited to that single provision, even though the term is used in multiple places throughout § 1026.36(a). For clarification purposes, the Bureau proposed to move this definition from § 1026.36(a)(1)(i)(B), to new § 1026.36(a)(6), which explicitly makes the definition applicable to the entire section. The Bureau solicited comment on whether additional guidance concerning the meaning of particular credit terms that are or may be made available to the consumer in light of the consumer’s financial characteristics is necessary, and if so, what clarifications would be helpful.

Second, the Bureau proposed to revise § 1026.36(a)(1)(i)(A) and (B), and comments 36(a)-1 and -4 to address inconsistencies regarding the meaning of “credit terms,” and to clarify that an activity involving credit terms for purposes of determining when a person is a loan originator must relate to “particular credit terms that are or may be available from a creditor to that consumer selected based on the consumer’s financial characteristics,” not credit terms generally. The proposal would have clarified that a person who discusses with a consumer that, based on the consumer’s financial characteristics, a creditor should be able to offer the consumer an interest rate of 3%, would be considered a loan originator. However, a person who merely states general information such as “we offer rates as low as 3% to qualified consumers” would not have been considered a loan originator because the person is not offering particular credit terms that are or may be available to that consumer selected based on the consumer’s financial characteristics.

Comments

The Bureau received comments from trade associations, industry, and consumer groups that addressed this clarification. Most commenters generally supported the proposed clarification that “credit terms” refers to “credit terms that are or may be made available from a creditor to that consumer selected based on the consumer’s financial characteristics,” as well as the proposed explanation that “credit terms” includes rates, fees, and other costs. Some commenters requested additional clarification regarding the meaning and application of “the consumer’s financial characteristics.” A few industry commenters suggested that “financial characteristics” be limited to traditional factors that influence a credit decision, such as income and credit score. These commenters also asked the Bureau to clarify that an assessment of a consumer's financial characteristics does not include a person simply having general knowledge of the consumer's account or finances, but requires an actual assessment of the consumer's financial characteristics that form the basis for selection of credit terms. Consumer groups generally supported the clarification, but suggested that an assessment of a consumer's financial characteristics should include steering based on other factors such as race, ethnicity, or zip code.

Final Rule

The Bureau is adopting the clarifications to references to "credit terms" in § 1026.36(a)(1)(i)(A) and comments 36(a)-1 and -4 as proposed, and new § 1026.36(a)(6) (which states the definition of "credit terms" for purposes of the section) as proposed with an additional clarification. In response to public comments requesting additional clarification, the Bureau is modifying proposed § 1026.36(a)(6) to clarify that credit terms are selected based on a consumer's financial characteristics when those terms are selected based on factors that may influence a credit decision, such as the consumer's debts, income, assets, or credit history. The Bureau intends this language to capture situations where credit terms are offered or discussed as available or potentially available to a consumer based on that consumer's ability to obtain such credit. This would include examining the consumer's credit history (which could include a credit score), income, debts, or assets and then selecting credit terms that are either available or potentially available to the consumer based on those factors. The Bureau does not intend this language to cover situations where, for example, an employee of a loan originator or creditor may be aware of a consumer's assets, income, or other factors but does not select credit terms based on those factors.

The Bureau is not providing additional commentary to address potential referral concerns based on race, gender, ethnicity, or other non-financial factors. The Bureau intends this provision only to provide clarification on when a person may be considered a “loan originator” by discussing credit terms—*i.e.*, when the terms have been selected based on the consumer’s financial characteristics. To the extent that inappropriate non-financial characteristics such as race, gender, or ethnicity may factor into the selection of credit terms, the Bureau believes such situations would be addressed by other applicable laws such as ECOA and the Fair Housing Act. In any event, the Bureau did not intend this clarification to define the appropriate means of evaluating consumers for credit; rather it only intended to clarify when a person may be considered a loan originator by virtue of discussing credit terms with a consumer. The Bureau believes these changes better align the scope of the loan originator definition with the intended scope of § 1026.36.

Finally, as explained below in the section that discusses applicability of § 1026.36(a)(1) to employees of manufactured home retailers , the Bureau is not adopting the proposed clarification to § 1026.36(a)(1)(i)(B) except for removing the parenthetical reference defining credit terms.

B. Application-Related Administrative and Clerical Tasks.

The Proposal

Comment 36(a)-4 and its subparts explain certain activities that, for purposes of § 1026.36(a), do not constitute “referring” as defined in comment 36(a)-1, when done (in the absence of other loan originator activities defined in § 1026.36(a)(1)) by certain managers, administrative or clerical staff, or similar employees of a loan originator or creditor. One such comment, 36(a)-4.i, provides guidance regarding when such persons engage in application-related administrative and clerical tasks. Specifically, this comment provides that persons do not act as loan originators when they (1) at the request of the consumer, provide an application form to the consumer; (2) accept a completed application form from the consumer; or (3) without assisting the consumer in completing the application, processing or analyzing the information, or discussing specific credit terms or products available from a creditor with the consumer, deliver the application to a loan originator or creditor.

After publication of the final rule, the Bureau received inquiries regarding the scope of this comment, specifically if the Bureau intended this comment to allow such persons only to provide applications from the entity for which they work to consumers without that constituting a "referral," or if the exception is broader and would allow any such person to influence consumers' decisions and refer them to a particular creditor or set of creditors without being considered loan originators. The Bureau proposed revisions to comment 36(a)-4.i to clarify when providing a consumer with a credit application amounts to acting as a loan originator, as opposed to falling under the exclusion provided in comment 36(a)-4.i for application-related administrative and clerical tasks. Specifically, the Bureau proposed to revise this comment to clarify that the exclusion only extends to a loan originator or creditor employee (or agent or contractor) that provides a credit application form from the entity for which the person works to the consumer for the consumer to complete.

Comments

The Bureau received a number of comments from industry and trade associations that supported these clarifications. Most of these comments did not identify any additional need for clarification or suggestions. The Bureau also received a few comments from the manufactured housing industry, which are addressed separately in the discussion of § 1026.36(a)(1)(i)(B) below.

Final Rule

For the reasons discussed above, the Bureau is adopting comment 36(a)-4.i mostly as proposed, with some conforming changes for purposes of consistency with comment 36(a)-4.ii.B. While generally any person, including a loan originator employee would be acting as a loan originator for purposes of § 1026.36(a)(1) if he or she refers consumers to a particular creditor by providing an application from that creditor, the Bureau does not believe that a loan originator or creditor employee should be considered a loan originator for simply providing an application from the loan originator or creditor entity for which he or she works. The Bureau believes that, in such a case, provided that the person does not assist the consumer in completing the application or otherwise influence his or her decision, the person is performing an administrative task on behalf of the entity for which he or she works. Thus, in the Bureau's view, there would be little appreciable benefit for consumers for the rule to regard such persons as loan originators.

Also, as discussed below with respect to employees who provide creditor or loan originator contact information under comment 36(a)-4.ii.B, the Bureau believes ambiguity regarding the meaning of "in response to a consumer's request"—a factor included in both comments 36(a)-4.i and 36(a)-4.ii.B—could cause unnecessary compliance challenges. Moreover, the Bureau notes that classifying such individuals as loan originators for providing an application without first waiting for an express request from the consumer would subject them to the requirements applicable to loan originators. Again, in the Bureau's view, there would be little appreciable benefit for consumers for the rule to regard such persons as loan originators where the person is simply providing a credit application from the entity for whom the person works. Accordingly, the Bureau is adopting comment 36(a)-4.i as proposed, including removing the condition that the provision of the application must be "at the request of the consumer" and making a conforming change to the comment to only apply to employees of the loan originator or creditor, not all persons. However, the Bureau is making some wording changes for purposes of consistency with comment 36(a)-4.ii.B. The Bureau also is removing a reference to "credit products" which also is inconsistent with comment 36(a)-4.ii.B. The Bureau believes in both instances the rule should consider employees to be loan originators when such persons discuss credit terms that are or may be made available by a creditor or loan originator to that consumer selected based on the consumer's financial characteristics, not when they simply discuss particular categories of credit products generally, such as mortgages or home equity loans. Also as discussed above, the Bureau is not adopting proposed language that expressly would have extended this comment to agents or contractors of loan originators or creditors.

C. Responding to Consumer Inquiries and Providing General Information.

1. Employees of a creditor or loan originator who provide loan originator or creditor contact information.

The Proposal

Comment 36(a)-4.ii.B provides that the definition of loan originator does not include persons who, as employees of a creditor or loan originator, provide loan originator or creditor contact information to a consumer in response to the consumer's request, provided that the employee does not discuss particular credit terms available from a creditor and does not direct the consumer, based on the employee's assessment of the consumer's financial characteristics, to a particular loan originator or creditor seeking to originate particular credit transactions to consumers with those financial characteristics. Prior to issuing the proposal, the Bureau received many inquiries on this topic from stakeholders expressing concern that, absent a clarifying amendment, the rule could be interpreted to require tellers, greeters, or other such employees to be classified as loan originators for merely providing contact information to a consumer who did not clearly or explicitly ask for it. Stakeholders further asserted that such persons should not be considered loan originators when their conduct is limited to following a script prompting them to ask whether the consumer is interested in a mortgage loan and the tellers are not able to engage in any independent assessment of the consumer. Moreover, stakeholders have asserted it would be very costly to implement the training and certification requirements under Regulation Z as amended by the 2013 Loan Originator Compensation Final Rule for employers with large numbers of administrative staff who interact with consumers on a day-to-day basis in the manner described.

The proposal would have addressed these concerns by removing the requirement that creditor or loan originator contact information must be provided "in response to the consumer's request" for the exclusion to apply. In addition, and similar to the clarifications regarding credit terms discussed above, the Bureau also proposed to clarify that comment 36(a)-4.ii.B applies to loan originator or creditor agents and contractors as well as employees.

Comments

The Bureau received substantial comments from trade associations and industry, including credit unions and other small creditors, supporting the proposal. Consumer advocates also generally supported the proposal and did not raise specific objections to the revised comment. As discussed above, some consumer advocates and trade associations asked for additional clarification on what constitutes an "assessment of a consumer's financial characteristics," but most comments did not make specific suggestions other than to note that they support the proposal and welcome the change. The Bureau also received a few comments from the manufactured housing industry requesting additional clarification regarding how the proposed comment would apply to retailers, who, according to these commenters, may not be employees, agents, or contractors of a loan originator or creditor. Specifically, these commenters requested that the Bureau expressly include employees, agents, or contractors of manufactured housing retailers as covered by the provision, even if such person does not work for a loan originator or creditor, but provides loan originator contact information to consumers in the same manner described in the proposal.

Final Rule

The Bureau is adopting comment 36(a)-4.ii.B as proposed with two modifications. First, as discussed above with respect to comment 36(a)-4.i, the Bureau is not adopting proposed language that would have extended the scope of the comment to agents or contractors of loan originators or creditors. Second, the Bureau is clarifying that the exclusion is only available to employees of a loan originator or creditor that provide the contact information of the loan originator or creditor entity for which he or she works, or of a person who works for that same entity. As proposed, the Bureau is removing the qualifying phrase "in response to the consumer's request." The Bureau believes ambiguity regarding the meaning of "in response to a consumer's request" could have caused unnecessary compliance challenges. In such instances, the Bureau does not believe tellers or other such staff should be considered loan originators for merely providing loan originator or creditor contact information to the consumer (which would consist of such an employee directing a consumer to a loan originator who works for the same entity, or a creditor that is the same entity, as made explicit to conform the language in comments 4.i and 4.ii.B). The Bureau also notes that classifying such individuals as loan originators would subject them to the requirements applicable to loan originators with, in the Bureau's view, little appreciable benefit for consumers. However, the Bureau is retaining language, with some conforming changes, that would cover within the definition of "loan originator" any such employee of a creditor or loan originator organization who, in the course of providing loan originator or creditor contact information to the consumer, directs that consumer to a particular loan originator or particular creditor based on his or her assessment of the consumer's financial characteristics or discusses particular credit terms that are or may be available from a creditor or loan originator to the consumer selected based on consumer's financial characteristics. The Bureau believes these actions can influence the credit terms that the consumer ultimately obtains, and continues to believe these actions should result in application of the requirements imposed by the rule on loan originators. The Bureau believes this amendment should enable creditors and loan originators to implement the rule with respect to persons acting under the controlled circumstances specified by the comment while maintaining stronger protections in situations where significant steering could occur.

As noted above, the Bureau is making one adjustment to the comment to clarify that the exclusion only is available to an employee of a loan originator or creditor who provides the contact information of the loan originator or creditor entity for which he or she works, or of a person who works for that same entity. The Bureau recognizes that the proposed amendments did not expressly limit the exclusion in this way. However, the Bureau intended that the exclusion be subject to this limitation and believes it was strongly implied, given that the language of the exclusion begins with the qualification that the definition of loan originator does not include persons who," as employees of a creditor or loan originator," engage in certain activities. The fact that the exclusion only applies to persons in their capacity as employees of creditors or loan originators signals that they are only providing loan originator or creditor contract information for the entity for which they work. The Bureau did not contemplate that such persons would provide contact information, as employees of a creditor or loan originator, to loan originators or creditors that were not their employers and no comments indicating a different understanding of this provision were received. However, to better clarify application of the provision, the Bureau is modifying comment 36(a)-4.ii.B to state that the exclusion only extends to employees providing the contact information of "the entity for which he or she works or of a person who works for that same entity." The Bureau believes this will eliminate any ambiguity in the proposed comment that may have led such employees to believe the exclusion would extend to providing contact information for loan originators or creditors outside the entity for which they work. Accordingly, the Bureau is adopting this revised comment as proposed with this modification.

Finally, as discussed in greater detail below in the section that addresses employees of manufactured housing retailers, the Bureau also received some comments that suggested manufactured housing retailer employees should be exempt from the loan originator definition altogether for "referring," or otherwise should fall under this particular exclusion, regardless of whether they are employees, agents, or contractors of a loan originator or creditor. As discussed below in the discussion of § 1026.36(a)(1)(i)(B), the Bureau does not believe that any additional amendments to this comment are necessary that relate to manufactured housing retailer employees.

2. Describing other product-related services.

Comment 36(a)-4.ii.C provides that the definition of loan originator does not include persons who describe other product-related services. The Bureau proposed to amend this comment to provide examples of persons who describe other product-related services. The proposed new examples would have included persons who describe optional monthly payment methods via telephone or via automatic account withdrawals, the availability and features of online account access, the availability of 24-hour customer support, or free mobile applications to access account information. In addition, the proposed amendment to comment 36(a)-4.iii.C would have clarified that persons who perform the administrative task of coordinating the closing process are excluded, whereas persons who arrange credit transactions are not excluded. The Bureau received comments that generally supported the proposed clarifications, but did not receive comments specifically addressing this clarification in isolation. Accordingly, the Bureau is adopting revised comments 36(a)-4.ii.C and 36(a)-4.iii.C as proposed.

3. Amounts for Charges for Services That Are Not Loan Origination Activities.

Comment 36(a)-5.iv.B provides that compensation includes any salaries, commissions, and any financial or similar incentive, regardless of whether it is labeled as payment for services that are not loan origination activities. The Bureau proposed to revise this comment to provide that compensation includes any salaries, commissions, and any financial or similar incentive "to an individual loan originator," regardless of whether it is labeled as payment for services that are not loan origination activities. The proposed wording change conforms this provision to the other provisions in comment 36(a)-5.iv that permit compensation paid to a loan originator organization under certain circumstances for services it performs that are not loan originator activities. The Bureau received comments that generally supported the proposed clarifications, but did not receive comments specifically addressing this clarification in isolation. Accordingly, the Bureau is adopting revised comment 36(a)-5 as proposed.

D. Clarification of Exclusion for Employees of Retailers of Manufactured Homes.

The Proposal

As discussed above, the Bureau proposed to revise both §§ 1026.36(a)(1)(i)(A) and 1026.36(a)(1)(i)(B) to address several inconsistencies regarding the meaning of "credit terms" and to clarify that any such activity must relate to "particular credit terms that are or may be available from a creditor to that consumer selected based on the consumer's financial characteristics," not credit terms generally. The proposed rule preamble also provided examples of how the proposed revisions to comment 36(a)-4.i would affect such employees of manufactured home retailers. As a result of these proposed revisions, employees (or agents or contractors) of manufactured home retailers who provide a credit application form from one particular creditor or loan originator organization that is not the entity for which they work would not have qualified for the exclusions in § 1026.36(a)(1)(i)(A) or § 1026.36(a)(1)(i)(B) and comment 36(a)-4.i. would not apply. In contrast, an employee of a manufactured home retailer who simply provides a credit application form from one particular creditor or loan originator organization that is his or her employer potentially would have been eligible for the exclusions in § 1026.36(a)(1)(i)(A) and § 1026.36(a)(1)(B) and comment 36(a)-4.i potentially would have applied. An agent or contractor of a manufactured home retailer who simply provides a credit application form from one particular creditor or loan originator organization it works for as agent or contractor potentially would have been eligible for the exclusion in § 1026.36(a)(1)(i)(A) and comment 36(a)-4.i. potentially would have applied. The proposed revisions also would have clarified that comment 36(a)-4.i. would apply to someone who merely delivers a completed credit application form from the consumer to a creditor or loan originator if other conditions are met, but would have removed language that could have been misinterpreted to suggest that comment 36(a)-4.i. would apply to someone who accepts an application in the sense of taking or helping the consumer complete an application could be eligible for the exclusion.

Comments

The Bureau received comments from the manufactured housing industry that sought additional clarification on how the proposed amendments would apply to employees of manufactured housing retailers. Specifically, these comments relate to the illustrations of the proposed amendments the Bureau provided in the preamble indicating that comment 36(a)-4.i would only apply to manufactured housing retailer employees who also are employees (or agents or contractors) of the creditor or loan originator. Commenters expressed concern that manufactured housing retailer employees are typically not employees, agents, or contractors of a loan originator or creditor, and thus would only be able to take advantage of this particular exclusion in the case where the retailer itself provides financing or acts as the loan originator. These commenters suggested that retailer employees should be allowed to "refer" customers to particular loan originators or creditors other than the retailer itself without being considered loan originators, so long as the other conditions set forth in comment 36(a)-4.i are met. In addition, these commenters also suggested that their employees should not be covered by the loan originator rules at all to the extent that they do not receive compensation from any creditor for such activity. No other commenters focused on application of the rules to manufactured home retailer employees.

Final Rule

As discussed below, the Bureau is adopting several clarifying amendments and additional commentary to address comments from the manufactured housing industry that questioned the applicability to manufactured home retailer employees of commentary that describes “referral” as loan originator activity and of various exclusions set forth in § 1026.36(a)(1)(i)(A), § 1026.36(a)(1)(i)(B), and discussed in comment 36(a)-4 and its subparts.

Background. As an initial interpretive matter, the Bureau believes it is helpful to outline the statutory provision implemented by § 1026.36(a)(1)(i)(B), and how it relates to other provisions implemented by the 2013 Loan Originator Compensation Final Rule. TILA section 103(cc)(2)(A) provides a three-part test for determining if a person is a loan originator, namely that, for or in expectation of direct or indirect compensation or gain, a person (1) takes a mortgage application, (2) assists a consumer in obtaining or applying to obtain a mortgage loan, or (3) offers or negotiates terms of a mortgage loan. The language of TILA section 103(cc) that defines a “mortgage originator” does not specifically include the term “refer” or its variants. However, the Bureau has interpreted both “assists a consumer in obtaining or applying to obtain a residential mortgage loan” under section 103(cc)(2)(A)(ii) and “offers” under section 103(cc)(2)(A)(iii) to include a referral of a consumer to a loan originator or creditor.[37]

This definition, which forms the basis for the definition of loan originator adopted in § 1026.36(a)(1)(i), applies generally to all persons, unless one of a limited number of exclusions applies. One such exclusion exists for manufactured home retailer employees in TILA section 103(cc)(2)(C)(ii), and provides that the second part of the three-part test described above—assisting a consumer in obtaining or applying to obtain a mortgage loan—does not render a retailer employee a loan originator provided the employee does not engage in either of the other

[37] *See* 78 FR at 11300, including footnote 62 (Supplemental Information to the 2013 Loan Originator Compensation Final Rule, discussing “offers”).

two steps (taking an application or offering or negotiating terms) and also does not advise a consumer on loan terms (including rates, fees, and other costs). Thus, a retailer employee who merely assists without offering, negotiating, taking an application, or advising, is not a loan originator (while one who offers or negotiates, takes an application, or advises on loan terms would be a loan originator).

This statutory provision was implemented by § 1026.36(a)(1)(i)(B), which is based on, and largely tracks, the statutory language. Consistent with this statutory structure, § 1026.36(a)(1)(i)(B) provides an exclusion for "An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms available from a creditor, or advise a consumer on credit terms (including rates, fees, and other costs) available from a creditor." The effect of this exclusion is that retailer employees are loan originators if they do anything in the general, core definition in § 1026.36(a)(1)(i) other than "assist" in a manner that doesn't constitute taking, advising, offering or negotiating, or advising on credit terms. Because both "assisting" and "offering" include the activity of referring, a retailer employee who makes a referral is "offering" and therefore is a loan originator.[38]

The Bureau believes these provisions make clear how employees of manufactured housing retailers fit within the § 1026.36(a)(1)(i) definition of loan originator, including with respect to referrals as described in comment 36(a)-1.i.A.*1*. The Bureau also provided some additional explanation in the Supplementary Information to the proposed rule, which sought to clarify further the application of comment 36(a)-4.i to such employees. However, the Bureau

[38] This aspect of the retailer employee exclusion was implemented by § 1026.36(a) as adopted by the 2013 Loan Originator Compensation Final Rule, and explicitly addressed in the preamble to that rule, where the Bureau responded to similar comments from the manufactured housing industry. One of those comments asserted that, under the proposed exclusion for employees of a manufactured home retailer, employees could be compensated, in effect, for referring a consumer to a creditor without becoming a loan originator. The Bureau made clear that this was not a correct reading of the exclusion, and explained its basis for disagreeing. *See* 78 FR at 11305.

continues to receive inquiries from industry, including comments received in connection with the June 2013 Proposal, that indicate there is still substantial confusion regarding the application of these provisions and comments to employees of manufactured housing retailers. For this reason, the Bureau is adopting additional commentary to provide further guidance and codify explanations previously set forth in the Supplementary Information to the 2013 Loan Originator Compensation Final Rule and the June 2013 Proposal.

Proposed amendments to § 1026.36(a)(1)(i)(B). The Bureau is not adopting in this final rule proposed amendments to § 1026.36(a)(1)(i)(B) other than moving the definition of "credit terms" to § 1026.36(a)(6). As discussed above related to "credit terms," the Bureau proposed to modify the reference to "credit terms" in §§ 1026.36(a)(1)(i)(A) and 1026.36(a)(1)(i)(B), as well as comments 36(a)-4.i and 36(a)-4.ii.B, to be limited to "credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics." As discussed above, the Bureau believes this limitation is appropriate in the context of § 1026.36(a)(1)(i)(A) and comments 36(a)-4.i and 36(a)-4.ii.B. Each of these provisions addresses situations where employees of a loan originator or creditor may, absent exception, be considered loan originators for conducting activity within the entities for which they work. For example, § 1026.36(a)(1)(i)(A) relates to persons who perform purely administrative or clerical tasks on behalf of a person who is classified as a loan originator or creditor, while comments 36(a)-4.i and 36(a)-4.ii.B relate to determining whether an employee of a loan originator or creditor engages in "referring" by providing an application from the entity for which such person works, or providing loan originator or creditor contact information for a loan originator or creditor that is or works for the same entity. Each of these situations applies to persons who may be assisting loan originators within the same entity or otherwise technically "referring" consumers to loan originators or creditors that are or work for the same entity. However, upon further consideration the Bureau believes the limitation is not appropriate in the context of § 1026.36(a)(1)(i)(B), which states that a manufactured home retailer employee would not be considered a loan originator if that person does not, among other things, “offer or negotiate credit terms” or “advise a consumer on credit terms.” The limitation is only intended to apply in the context of an employee of a loan originator or creditor assisting a loan originator or making a referral to the loan originator or creditor entity for which such person works. To the extent a retailer of manufactured housing is also a loan originator or creditor, the exclusions under § 1026.36(a)(1)(i)(A) and comments 36(a)-4.i and 36(a)-4.ii.B may be available for its employees. However, the limitation has no applicability outside of the loan originator or creditor employer/employee context and, accordingly, is not being included as the Bureau proposed in § 1026.36(a)(1)(i)(B), which addresses a different employer/employee context.

Accordingly, the Bureau is not adopting this proposed change to § 1026.36(a)(1)(i)(B).

Referrals. The Bureau is amending comment 36(a)-1.i.A.*1* to explain further the underlying statutory and regulatory bases for including “referrals” as loan originator activity. As adopted by the 2013 Loan Originator Compensation Final Rule, comment 36(a)-1.i.A.*1* explains what actions constitute “ referring” for purposes of §1026.36(a)(1)(i), while comment 36(a)-4 and its subparts provide guidance on certain activities that do not constitute referring. The Bureau is amending this comment to explain that referring is an activity included under each of the activities of offering, arranging, or assisting a consumer in obtaining or applying to obtain an extension of credit. Accordingly, the Bureau believes this amendment makes clear that, while a referral may be considered “assisting,” it also falls within other statutory and regulatory categories of loan originator activity not excluded from the loan originator definition for manufactured housing retailer employees. The Bureau believes the discussion above and the conforming revision to comment 36(a)-1.i.A.*1* better clarify what activities, when done by an employee of a retailer of manufactured homes, will cause such an employee to be classified as a loan originator for purposes of § 1026.36. The Bureau further notes this revision is consistent with the 2013 Loan Originator Compensation Final Rule, which provides an extensive discussion of the activities covered by TILA section 103(cc)(2)(A)(ii).[39] As noted above in this preamble, the retailer employee exclusion allows such an employee to engage in “assisting” activities in a manner that doesn’t constitute taking, advising, offering or negotiating, or advising on credit terms.

New commentary. In addition, the Bureau is adding new commentary to provide further guidance on what activities may be considered “assisting,” but not other loan originator activities such as offering, arranging, or taking an application. In the Bureau’s view, these activities, when engaged in by employees of manufactured housing retailers (in the absence of other activities), do not render such employees loan originators for purposes of §1026.36. Accordingly, to provide greater clarity concerning the retailer employee exclusion consistent with these conclusions, a new comment 36(a)(1)(i)(B) is added by this final rule. The comment states that engaging in certain listed activities, as described below, does not make such an employee a loan originator.

The Bureau is adding new comment 36(a)(1)(i)(B)-1.i to explain that a retailer employee may generally describe the credit application process to a consumer and that this activity, standing alone, would not cause the employee to be considered a loan originator.[40] However, the

[39] See 78 FR at 11301 through 11303.
[40] *See* 78 FR at 11302.

retailer employee would be considered a loan originator if he or she advises on credit terms available from a creditor.

The Bureau is adding new comment 36(a)(1)(i)(B)-1.ii to explain that a retailer employee may prepare residential mortgage loan packages without being considered a loan originator.[41] Thus, a retailer employee may compile and process application materials and supporting documentation and, further consistent with the Final Rule, provide general application instruction to consumers so consumers can complete an application, but without interacting or communicating with the consumer regarding specific transaction terms.

The Bureau notes that this comment is consistent with the Supplementary Information to the 2013 Loan Originator Compensation Final Rule, which states:

> The Bureau agrees that persons generally engaged in loan processing or who compile and process application materials and supporting documentation and do not take an application, collect information on behalf of the consumer, or communicate or interact with consumers regarding specific transaction terms or products are not loan originators (see the separate discussion above on taking an application and collecting information on behalf of the consumer).[42]

In contrast, however, the Supplementary Information to the 2013 Loan Originator Compensation Final Rule also noted that "filling out a consumer's application, inputting the information into an online application or other automated system, and taking information from the consumer over the phone to complete the application should be considered 'tak[ing] an application' for the purposes of the rule."[43] Because the retailer employee exclusion does not apply if the employee engages in taking an application, filling out a consumer's application, inputting the information into an online application or other automated system, and taking

[41] *See* TILA section 103(cc)(4) (definition of "assists").
[42] 78 FR at 11303
[43] 78 FR at 11299. *See also* comment 36(a)-1.i.A.*3.*, 78 FR at 11415.

information from the consumer over the phone to complete the application would make the employee a loan originator.

The Bureau is adding new comment 36(a)(1)(i)(B)-1.iii to explain that a retailer employee may collect information on behalf of the consumer with regard to a residential mortgage loan.[44] This activity is not included in the activities covered by taking or offering or assisting that would make a retailer employee a loan originator. Comment 36(a)-1.i.*3.* and the Supplementary Information to the 2013 Loan Originator Compensation Final Rule describe the activity of collecting information on behalf of the consumer as including gathering information or supporting documentation from third parties on behalf of the consumer to provide to the consumer, for the consumer then to provide in the application or for the consumer to submit to the loan originator or creditor.[45]

The Bureau is adding new comment 36(a)(1)(i)(B)-1.iv to explain that a retailer employee may provide or make available general information about creditors that may offer financing for manufactured homes in the consumer's general area, when doing so does not otherwise amount to "referring" as defined in comment 36(a)-1.i.A.*1*. Comment 36(a)-1.i.A.*1* provides in part that referring "includes any oral or written action directed to a consumer that can affirmatively influence the consumer to select a particular loan originator or creditor to obtain an extension of credit when the consumer will pay for such credit." Although this statement hardly covers the range of activities that may constitute referring, it does provide a basis for addressing the relatively unique circumstances of manufactured home retailer employees, who are covered by a limited statutory exclusion from the definition of loan originator.

[44] *See* TILA section 103(cc)(4) (definition of "assists a consumer in obtaining or applying to obtain a residential mortgage loan").
[45] 78 FR at 11303, 11415.

The Bureau believes that most consumers purchasing a manufactured home will need financing, and that a limited set of options may be available. As public commenters have noted, only a small number of creditors make loans secured by manufactured homes, and it is beneficial to consumers for that information to be made available to them by a retailer. To facilitate consumer access to credit in this situation, new comment 36(a)(1)(i)(B)-.1.iv allows a retailer employee to make general information about creditors or loan originators available, which includes making available, in a neutral manner, general brochures or information about the different creditors or loan originators that may offer financing to a consumer, but does not include recommending a particular creditor or loan originator or otherwise influencing the consumer's decision. The Bureau believes this comment falls within the purview of the quoted portion of comment 36(a)-1.i.A.*1* above, taking into consideration the unique circumstances and the limited statutory exclusion.

Finally, the Bureau notes that the comment extends to providing general information about loan originators (*i.e.*, mortgage brokers) as well as creditors. Based on public comments, the Bureau believes that under current market conditions only a small number of specialized creditors currently operate in this market, and the Bureau is not aware of any mortgage brokers or similar loan originators that currently operate in this space. Nevertheless, the Bureau recognizes that circumstances may change and brokers or other loan originators may decide to offer loans secured by manufactured homes, and if that were to occur the Bureau believes the same logic that applies to creditors described above would apply with respect to these persons or organizations. Accordingly, the comment includes loan originators as well as creditors.

36(b) Scope

The Proposal

The Bureau proposed to revise the scope of provisions in § 1026.36(b) to reflect the applicability of the servicing provisions in § 1026.36(c) regarding payment processing, pyramiding late fees, and payoff statements as modified by the 2013 TILA Servicing Final Rule.[46] Current § 1026.36(b) and comment 36(b)-1 (relocated from § 1026.36(f) and comment 36-1, respectively, by the 2013 Loan Originator Compensation Final Rule) provide that § 1026.36(c) applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. The new payment processing provisions in § 1026.36(c)(1) and the restrictions on pyramiding late fees in § 1026.36(c)(2) both apply to consumer credit transactions secured by a consumer's principal dwelling. The new payoff statement provisions in § 1026.36(c)(3), however, apply more broadly to consumer credit transactions secured by a dwelling.

The proposal would have revised § 1026.36(b) and comment 36(b)-1 to state that § 1026.36(c)(1) and (c)(2) apply to consumer credit transactions secured by a consumer's principal dwelling. The proposed revisions also would have provided that § 1026.36(c)(3) applies to a consumer credit transaction secured by a dwelling (even if it is not the consumer's principal dwelling). The Bureau sought comment on these proposed revisions generally. The Bureau also invited comment on whether additional revisions to § 1026.36(b) and comment 36(b)-1 should be considered to clarify further the applicability of the provisions in § 1026.36(c) as modified by the 2013 Servicing Final Rules.

Comments

[46] Among other things, the 2013 TILA Servicing Final Rule implemented TILA sections 129F and 129G added by section 1464 of the Dodd-Frank Act. The requirements in TILA section 129F concerning prompt crediting of payments apply to consumer credit transactions secured by a consumer's principal dwelling. The requirements in TILA section 129G concerning payoff statements apply to creditors or servicers of a home loan. The 2013 TILA Servicing Final Rule, however, did not substantively revise the existing late fee pyramiding requirement in § 1026.36(c) but instead redesignated the requirement as new paragraph 36(c)(2) to accommodate the regulatory provisions implementing TILA sections 129F and 129G.

The Bureau received one comment that generally supported this clarification.

Final Rule

The Bureau is adopting these revisions to § 1026.36(b) and comment 36(b)-1 as proposed, to conform them to modifications made to § 1026.36(c) by the 2013 Servicing Final Rules that changed the applicability of certain provisions in § 1026.36(c). The Bureau believes the revisions are necessary to reflect the applicability of the provisions in § 1026.36(c) as modified by the 2013 Servicing Final Rules.

36(d) Prohibited Payments to Loan Originators

36(d)(1) Payments Based on a Term of the Transaction

36(d)(1)(i)

The Bureau proposed to revise comments 36(d)(1)-1.ii and 36(d)(1)-1.iii.D, which interpret § 1026.36(d)(1)(i)-(ii), to improve the consistency of the wording across the regulatory text and commentary, and provide further interpretation of the intended meaning of the regulatory text. The Bureau did not receive any comments pertaining to these particular proposed changes. As described below in the section-by-section analysis for § 1026.36(d)(1)(iv), the Bureau received a small number of comments expressing general support for the proposed clarifications to § 1026.36(d) and its commentary. The Bureau is finalizing the revisions to comments 36(d)(1)-1.ii and -1.iii.D as proposed. As it stated in the proposal, the Bureau believes these changes facilitate compliance.

36(d)(1)(iii)

The Bureau proposed to revise the portions of comment 36(d)(1)-3 that interpret § 1026.36(d)(1)(iii) to improve the consistency of the wording across the regulatory text and commentary, and provide further interpretation of the intended meaning of the regulatory text.

The Bureau did not receive any comments pertaining to these particular proposed changes. As described below in the section-by-section analysis for § 1026.36(d)(1)(iv), the Bureau received a small number of comments expressing general support for the proposed clarifications to § 1026.36(d) and its commentary. The Bureau is finalizing the revisions to the portions of comment 36(d)(1)-3 that interpret § 1026.36(d)(1)(iii) as proposed. As it stated in the proposal, the Bureau believes these changes facilitate compliance.

36(d)(1)(iv)

The Bureau proposed revisions to the portions of comment 36(d)(1)-3 that interpret § 1026.36(d)(1)(iv). Section 1026.36(d)(1)(iv) permits, under certain circumstances, the payment of compensation under a non-deferred profits-based compensation plan to an individual loan originator even if the compensation is directly or indirectly based on the terms of multiple transactions by multiple individual loan originators. Section 1026.36(d)(1)(iv)(B)(*1*) permits this compensation if it does not exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which the compensation under a non-deferred profits-based compensation plan is paid. Comments 36(d)(1)-3.ii through -3.v further interpret § 1026.36(d)(1)(iv)(B)(*1*). Section 1026.36(d)(1)(iv)(B)(*2*) permits this compensation if the individual loan originator is a loan originator for ten or fewer consummated transactions during the 12-month period preceding the compensation determination. Comment 36(d)(1)-3.vi further interprets § 1026.36(d)(1)(iv)(B)(*2*). The Bureau proposed to amend comment 36(d)(1)-3 to improve the consistency of the wording across the regulatory text and commentary, provide further interpretation as to the intended meaning of the regulatory text in § 1026.36(d)(1)(iv), and ensure that the examples included in the commentary accurately reflect the interpretations of the regulatory text contained elsewhere in the commentary. As the Bureau explained in the proposal, nearly all of the proposed revisions address the commentary sections that interpret the meaning of § 1026.36(d)(1)(iv)(B)(*1*) (*i.e.*, setting forth the 10-percent total compensation limit) and not § 1026.36(d)(1)(iv)(B)(*2*). In the proposal, the Bureau explained that it was proposing more extensive clarifications to two comments interpreting § 1026.36(d)(1), comment 36(d)(1)-3.v.A, which clarifies the meaning of "total compensation" as used in § 1026.36(d)(1)(iv)(B)(*1*), and comment 36(d)(1)-3.v.C, to clarify the meaning of "time period" in § 1026.36(d)(1)(iv)(B)(*1*). The Bureau stated in the proposal that these proposed revisions were collectively intended to clarify that, while the time period used to determine both elements of the 10-percent limit ratio is the same: (1) the non-deferred profits-based compensation for the time period is whatever such compensation was earned during that time period, regardless of when it was actually paid; and (2) compensation that is actually paid during the time period, regardless of when it was earned, generally will be included in the amount of total compensation for that time period, but whether the compensation is included ultimately depends on the type of compensation.

Of the institutions and individuals who submitted comments on the proposed changes to the 2013 Loan Originator Compensation Final Rule, very few specifically discussed the proposed clarifications and amendments to § 1026.36(d) and its commentary. One large depository institution first highlighted some of the proposed changes to the § 1026.36(d) commentary and then stated that it generally agreed with the Bureau's proposed amendments and clarifications. Some consumer groups expressed general disagreement with elements of § 1026.36(d) adopted by the 2013 Loan Originator Compensation Final Rule, which they believe the proposed revisions would amplify, but did not address any specific issues with the proposal itself.

The Bureau is finalizing the changes to § 1026.36(d) and the portions of comment 36(d)(1)-3 that interpret § 1026.36(d)(1)(iv) as proposed. As it stated in the proposal, the Bureau believes these changes would facilitate compliance.

36(i) Prohibition on Financing Credit Insurance

The Bureau proposed to amend § 1026.36(i) to clarify the scope of the prohibition on a creditor financing, directly or indirectly, any premiums for credit insurance in connection with a consumer credit transaction secured by a dwelling. Dodd-Frank Act section 1414 added TILA section 129C(d), which generally prohibits a creditor from financing premiums or fees for credit insurance in connection with a closed-end consumer credit transaction secured by a dwelling, or an extension of open-end consumer credit secured by the consumer's principal dwelling. The prohibition applies to credit life, credit disability, credit unemployment, credit property insurance, and other similar products, including debt cancellation and debt suspension contracts (defined collectively as "credit insurance" for purposes of this discussion). The same provision, however, excludes from the prohibition credit insurance premiums or fees that are "calculated and paid in full on a monthly basis." As discussed below, the Bureau is adopting amended § 1026.36(i) as proposed with some modifications.

A. Background

1. Section 1026.36(i) as Adopted in the 2013 Loan Originator Compensation Final Rule.

In the 2013 Loan Originator Compensation Final Rule, the Bureau implemented this prohibition by adopting the statutory provision without substantive change, in § 1026.36(i). The final rule provided an effective date of June 1, 2013, for § 1026.36(i) and clarified that the provision applies to transactions for which a creditor received an application on or after that date.[47]

In the preamble to the final rule, the Bureau responded to public comments on the regulatory text that the Bureau had included in its proposal. The public comments included requests from consumer groups for clarification on the applicability of the regulatory prohibition to certain factual scenarios where credit insurance premiums are charged periodically, rather than as a lump-sum that is added to the loan amount at consummation. In particular, they requested clarification on the meaning of the exclusion from the prohibition for credit insurance premiums or fees that are "calculated and paid in full on a monthly basis." The Bureau did not receive any public comments from the credit insurance industry. The Bureau received a limited number of comments from creditors concerning the general prohibition, but these comments did not address specifically the applicability of the exclusion from the prohibition for premiums that are calculated and paid in full on a monthly basis.

In their comments, the consumer groups described two practices that they believed should be prohibited by the regulatory provision. First, they described a practice in which some creditors charge credit insurance premiums on a monthly basis but add those premiums to the consumer's outstanding principal. They stated that this practice does not meet the requirement that, to be excluded from the prohibition, premiums must be "paid in full on a monthly basis." They also stated that this practice constitutes "financing" of credit insurance premiums, which is prohibited by the provision. Second, the consumer groups described a practice in which credit insurance premiums are charged to the consumer on a "levelized" basis, meaning that the premiums remain the same each month, even as the consumer pays down the outstanding

[47] 78 FR at 11390.

balance of the loan. They stated that this practice does not meet the condition of the exclusion that premiums must be "calculated…on a monthly basis," and therefore violates the statutory prohibition. In the preamble of the final rule, the Bureau stated that it agreed that these practices do not meet the condition of the exclusion and violate the prohibition on creditors financing credit insurance premiums.

2. Outreach during implementation period following publication of the final rule.

After publication of the final rule, representatives of credit unions and credit insurers expressed concern to the Bureau about these statements in the preamble of the final rule. Credit union representatives questioned whether adding monthly premiums to a consumer's loan balance should necessarily be considered prohibited "financing" of the credit insurance premiums and indicated that, if it is considered financing and therefore is prohibited, they would not be able to adjust their data processing systems to comply before the June 1, 2013 effective date.

Credit insurance company representatives stated that level and levelized credit insurance premiums are in fact "calculated…on a monthly basis." (These representatives explained that industry uses the term "levelized" premiums to refer to a flat monthly payment that is derived from a decreasing monthly premium payment arrangement and use the term "level" premium to refer to premiums for which there is no decreasing monthly premium payment arrangement available, such as for level mortgage life insurance.) These representatives further asserted that levelized premiums are, in fact, "calculated…on a monthly basis" because an actuarially derived rate is multiplied by a fixed monthly principal and interest payment to derive the monthly insurance premium. They also asserted that level premiums are "calculated…on a monthly basis" because an actuarially derived rate is multiplied by the consumer's original loan amount to derive the monthly insurance premium. Accordingly, they urged that level and levelized credit insurance premiums should be excluded from the prohibition on creditors financing credit insurance premiums so long as they are also paid in full on a monthly basis. Industry representatives have further stated that, even if the Bureau concludes that level or levelized credit insurance premiums are not "calculated" on a monthly basis within the meaning of the exclusion from the prohibition, they are not "financed" by a creditor and thus are not prohibited by the statutory provision.

3. Delay of § 1026.36(i) effective date.

In light of these concerns, and the Bureau's belief that, if the effective date were not delayed, creditors could face uncertainty about whether and under what circumstances credit insurance premiums may be charged periodically in connection with covered consumer credit transactions secured by a dwelling, the Bureau issued the 2013 Effective Date Final Rule delaying the June 1, 2013 effective date of § 1026.36(i) to January 10, 2014.[48] In that final rule, the Bureau stated its belief that this uncertainty could result in a substantial compliance burden to industry. However, the Bureau also stated that it would revisit the effective date of the provision in this proposal.

B. Amendments to § 1026.36(i).

The Bureau proposed, as contemplated in the 2013 Effective Date Final Rule, amendments to § 1026.36(i) to clarify the scope of the prohibition on a creditor financing, directly or indirectly, any premiums for credit insurance in connection with a consumer credit transaction secured by a dwelling. The Bureau proposed these amendments because it was persuaded, based on communications with consumer advocates, creditors, and trade associations,

[48] 78 FR 32547 (May 31, 2013).

that its statement in the final rule in response to consumer group public comments may have been overbroad concerning when a creditor violates the prohibition on financing credit insurance premiums.

1. General Clarifications of Prohibition's Scope

The Proposal

The Bureau proposed two general clarifications to the scope of the prohibition. First, the Bureau proposed to clarify that, although the heading of the statutory prohibition emphasizes the prohibition on financing "single-premium" credit insurance, which historically has been accomplished by adding a lump-sum premium to the consumer's loan balance at consummation, the provision more broadly prohibits a creditor from "financing" credit insurance premiums "directly or indirectly" in connection with a covered consumer credit transaction secured by a dwelling. That is, it generally prohibits a creditor from financing credit insurance premiums at any time. Accordingly, the prohibited financing of credit insurance premiums is not limited to addition of a single, lump-sum premium to the loan amount by the creditor at consummation. The Bureau proposed to clarify the scope of the prohibition by striking the term "single-premium" from the § 1026.36(i) heading.

Second, the Bureau proposed to clarify the relationship between the exclusion for "credit insurance for which premiums or fees are calculated and paid in full on a monthly basis" and the general prohibition. The Bureau emphasized in the proposal that the mere fact that, under a particular premium calculation and payment arrangement, credit insurance premiums do not meet the conditions of the exclusion that they be "calculated and paid in full on a monthly basis" does not mean that a creditor is necessarily financing them in violation of the prohibition. For example, it is possible that credit insurance premiums could be calculated and paid in full by a consumer directly to a credit insurer on a quarterly basis with no indicia that the creditor is financing the premiums. (The Bureau's proposal to clarify the scope of the exclusion in situations in which the creditor is engaged in financing of credit insurance premiums is discussed below.)

Comments

Several commenters, including credit unions, credit insurance companies, and trade associations, expressed general appreciation and support for the Bureau's willingness to provide further clarifications regarding the prohibition. One credit insurance company asserted that the statutory provision is clear and requires no clarification. A number of credit insurance companies and trade associations supported the Bureau's foundational clarification that credit insurance premiums that do not meet the conditions of the exclusion that they be "calculated and paid in full on a monthly basis" do not necessarily indicate that a creditor is financing them in violation of the prohibition.

Several industry commenters, including credit unions and a credit union trade association, objected to the proposed removal of the term "single-premium" from the heading of § 1026.36(i), believing that the proposed change would expand the applicability of the prohibition to practices other than a creditor's addition of a single, lump-sum premium to the loan amount at consummation. The commenters stated that inclusion of the term "single-premium" in the heading of the statutory provision indicated that Congress intended the prohibition to apply only to that creditor practice.

Final Rule

The Bureau agrees that clarifications of the statutory and regulatory provisions are important to ensure that consumers and industry are able to determine which creditor practices regarding credit insurance are prohibited. The Bureau disagrees with the assertion that removal of the term "single-premium" from the heading of § 1026.36(i) affects the applicability of the regulatory provision or expands it beyond that of the statutory provision. The texts of both the statutory and regulatory provisions prohibit creditors from financing credit insurance premiums generally, not just those for single-premium credit insurance, in connection with certain dwelling-secured loans. Although the heading of the statutory provision emphasizes the applicability of the prohibition to financing of single-premium credit insurance, a basic rule of statutory interpretation is that the heading cannot narrow the plain meaning of the statutory text.[49]

2. Definition of "Financing" for Purposes of § 1026.36(i)

The Proposal

In the proposal, the Bureau explained its belief that practices that constitute "financing" of credit insurance premiums or fees by a creditor are generally equivalent to an extension of credit to a consumer with respect to payment of the credit insurance premiums or fees. While neither TILA nor the Dodd-Frank Act expressly defines the term "financing," section 103(f) of TILA provides that the term "credit" means "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment."[50] Based on this definition of "credit," § 1026.4(a) of Regulation Z defines a "finance charge" to be a charge imposed by a creditor "as an incident to or condition of an extension of credit." Thus, the Bureau believes the general understanding of the term "financing" under TILA and Regulation Z to be analogous to an extension of credit—*i.e.*, a creditor's granting of a right to incur a debt and defer its payment. The Bureau stated this belief in the proposal, noting that a creditor finances credit insurance

[49] Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S. 241, 256 (2004).
[50] 15 U.S.C. 1602(f). Accord 12 CFR 1026.2(a)(14).

premiums within the meaning of the prohibition when it provides a consumer the right to defer payment of premiums or fees, including when it adds a lump-sum premium to the loan balance at consummation, as well as when it adds a monthly credit insurance premium to the consumer's principal balance.

Accordingly, the Bureau proposed to add redesignated § 1026.36(i)(2)(ii), to clarify that a creditor finances credit insurance premiums or fees when it provides a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer. However, the Bureau invited public comment on whether this clarification is appropriate. For example, the Bureau stated it did not believe that a brief delay in receipt of the consumer's premium or fee, such as might happen preceding a death or period of employment that the credit insurance is intended to cover, should cause immediate cancellation of the credit insurance. The Bureau also stated it did not believe that refraining from cancelling or causing cancellation of credit insurance in such circumstances means that a creditor has provided the consumer a right to defer payment of the premium or fee, but the Bureau invited public comment on consequences of defining the term "finances" as proposed. In addition, the Bureau noted that some creditors have suggested that they may, as a purely mechanical matter, add a monthly credit insurance premium to the principal balance shown on a monthly statement but then subtract the premium from the principal balance immediately or as soon as the premium or fee is paid. Accordingly, the Bureau solicited comment on whether a creditor should instead be considered to have financed credit insurance premiums or fees only if it charges a "finance charge," as defined in § 1026.4(a) (which implements section 106 of TILA, 15 U.S.C. 1605), on or in connection with the credit insurance premium or fee. The Bureau also requested comment on other situations that may arise that could cause credit insurance premiums to be considered "financed" under the proposal and may warrant special treatment, such as deficiencies where credit insurance premiums are escrowed.

Comments on the proposed clarification

The Bureau received substantial comment from the credit insurance industry, trade associations, creditors, and consumer groups addressing the proposed definition of financing as well as the alternative. The Bureau received no comments identifying other situations such as escrowed premiums that could cause credit insurance premiums to be considered “financed” and may warrant special treatment. Most industry commenters, including credit insurance companies, credit unions, and their trade associations and attorneys, generally supported the proposed clarification that a creditor finances credit insurance premiums or fees when it provides a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer. They urged the Bureau to clarify that the consumer does not “owe” the premium or fee until the consumer has incurred a “debt” for it, within the meaning of § 1026.2(a)(14). They stated that the consumer should not be considered to have incurred a debt for the credit insurance premium or fee until the monthly period in which the premium is due passes without the consumer having made the payment. Only then, these commenters stated, might creditors advance funds on the consumer’s behalf and provide the consumer a right to defer its payment, such that financing might occur. Accordingly, many of these commenters urged the Bureau to clarify that a creditor finances a credit insurance premium only if it provides a consumer the right to defer payment of the premiums “beyond the month in which they are due.” These commenters addressed a specific illustration provided by consumer groups in connection with the 2013 Loan Originator Compensation Final Rule, which adopted the provisions this proposal would have amended. In that illustration, consumer groups described a creditor that appeared to be adding the premium to principal on a monthly basis and then providing the consumer the right to defer payment long beyond the month in which it was due, or even indefinitely. Commenters agreed that such a practice would be prohibited under the clarification they urged, though they stated, variously, that they had never heard of a creditor actually engaging in such a practice, or that such practices were very rare. They also stated that the clarification they urged would show why adding a lump-sum credit insurance premium to the loan balance at consummation was prohibited. They stated that in such circumstances, the premium is due at consummation, so there is no identifiable "period" in which the premium is due. One credit insurance company, as well as attorneys for creditors and credit insurance companies, stated that the credit insurance premium should be considered financed by the creditor only if the consumer does not pay the premium when it is due and the creditor incorporates it into the loan to create an additional obligation. The company and attorneys stated that a creditor should not be considered to have financed a past-due credit insurance premium if it does not add the premium to the loan amount, but instead it or the insurer provides a grace period, the insurer's obligation to perform under the credit insurance contract is suspended, or the contract is cancelled.

Some credit unions and credit insurance companies that urged the Bureau to adopt the clarification discussed above suggested that it was important, in part, to permit the continuation of some credit unions' practice of "posting" the premium to the consumer's account, meaning that it is added to principal before the credit insurance premium is due, so it is reflected on the next periodic statement. Under the practice, the creditor then credits the consumer's account (meaning it is subtracted from principal) after the creditor receives the consumer's payment. Comments suggested that, for at least some credit unions and other small creditors, it is necessary to post the charge prior to its due date so the consumer's next periodic statement reflects the monthly charge. Some of these commenters stated that additional interest accrues as a result of this addition until the consumer's subsequent payment of credit insurance premium is credited to the account. Other credit union commenters stated that when they add the premium to principal before it is due, no additional interest accrues as a result. One credit insurance company explained that this credit union practice was necessary because credit unions' accounting and data processing systems recognize only principal and interest categories. The company stated that, as a result, there is no other way for them to charge the premium without extensive and cost-prohibitive changes in these systems. The company also stated that, for any creditor making a closed-end, fixed-rate mortgage, the only way to charge the consumer a monthly credit insurance premium that declines as the mortgage balance declines and also to charge a total monthly payment (*i.e.*, a payment including premium, interest, and credit insurance premium) that remains constant from month to month, is to add the premium to principal. The same commenter stated that the act of adding the premium to principal before it is due should not be considered financing and that if the creditor adds the credit insurance premium to principal before the premium is due, the creditor should be considered to have financed the credit insurance premium only if the consumer subsequently fails to pay the credit insurance premium by the end of the month in which it is due. Another credit insurance company urged the Bureau to clarify that a creditor's addition of the credit insurance premium to the principal balance before it is due should not be considered financing of the credit insurance premium even if the consumer subsequently fails to make the payment when it is due, provided that the creditor added it to principal in the same monthly period in which the consumer was contractually obligated to pay the credit insurance premium.

Credit insurance companies, a credit insurance trade group, and several credit union commenters supported the proposed clarification of what constitutes financing but urged the Bureau to clarify that a creditor does not provide a consumer a right to defer payment of the credit insurance premium merely because the consumer fails to pay the premium when it is due, the creditor provides a forbearance, or the creditor and consumer enter into a post-consummation work-out agreement to defer or suspend mortgage payments. They stated that in such cases, the creditor may provide the consumer a contractual right to defer payment of the credit insurance premium but typically does not ever add the deferred premium payment to the loan balance.

Consumer groups opposed the Bureau's proposed clarification that a creditor finances credit insurance premiums or fees when it provides a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer. They reasoned that mere deferment of credit insurance premium payments is beneficial consumers, but, in their view, a creditor's act of charging consumers for the deferment is harmful to consumers. They expressed concern that the proposed clarification based on providing a consumer the right to defer payment of credit insurance premiums could cause creditors to stop deferring a consumer's obligation to pay credit insurance premiums without charge. They also stated that the proposed clarification could be confusing because the purpose of debt suspension contracts is to permit a consumer to skip a monthly mortgage payment. They disagreed with the comment of a credit insurance company that a creditor's addition of a credit insurance premium to principal in the same month that the consumer is contractually obligated to pay it should not be considered financing of the premium, even if doing so results in increased interest charge to the consumer and regardless of whether the consumer pays the credit insurance premium when it is due. The consumer groups countered that, if additional interest is charged as a result of the creditor's addition of the credit insurance premium to principal, then the creditor is clearly financing the credit insurance premium, regardless of when the consumer is obligated to make the credit insurance premium payment.

Comments on the alternative clarification

Several consumer groups, legal services organizations, and fair housing organizations supported the alternative provision that would have clarified what constitutes financing of credit insurance premiums or fees, on which the Bureau invited public comment. The alternative clarification would have provided that a creditor finances credit insurance premiums only if it charges a finance charge on or in connection with the credit insurance premium or fee. These commenters, however, urged the Bureau to broaden the alternative proposal further, to clarify that a creditor charges a finance charge in connection with the premium and thus finances credit insurance premiums or fees if it charges the consumer any dollar amount in a given month that exceeds a rate filed with and not disapproved by the State insurance regulator.

A number of credit unions also supported the alternative clarification. Generally, the credit unions that supported the alternative approach were the same credit unions that reported using the practice of adding credit insurance premiums to principal before they are due but stated that, under their own practices, no additional interest accrues as a result of the addition. These commenters stated that their practice should not be considered to be financing credit insurance premiums, but that a creditor that adds premiums to principal and allows additional interest to accrue until the consumer's subsequent payment is applied should be considered to be financing the credit insurance premiums.

Most other credit insurance and credit union commenters opposed the alternative proposal, for several reasons. Several credit insurance companies, creditor trade associations, and a credit union opposed the alternative proposal because the definition is vague. Specifically, they noted that the definition of “finance charge” in § 1026.2(a)(14) excludes credit insurance premiums and fees under certain conditions, and argued that a definition of financing credit insurance premiums and fees that depends on whether a finance charge is imposed “on or in connection with” credit insurance premiums or fees would create confusion and lead to unintended consequences. For example, they stated that a finance charge may arguably be paid “in connection” with a premium if additional interest accrues because payment of the premium—even in full on a monthly basis—may result in slower amortization of the loan than would occur if no premium were paid. However, such interest does not indicate the premium or fee is being advanced by the creditor to or on behalf of the consumer. They also stated that any additional interest that is accrued as a result of the creditor adding a monthly credit insurance premium to principal and the passage of time until the consumer’s subsequent payment is applied should not be considered financing, because the addition to principal for accounting and monthly statement purposes does not indicate that the creditor is advancing any funds to or on behalf of the consumer. One such credit union also emphasized that the additional interest that accrues under its practices is very small, totaling on average 84 cents per year. It stated that the substantial cost of having to change accounting and data processing systems would be considerable, such that credit unions might simply choose not to offer credit insurance products to their customers.

In addition, these commenters stated that the alternative proposal appears inconsistent with the statutory exclusion for credit insurance premiums and fees that are calculated and “paid in full on a monthly basis,” which would allow a finance charge in connection with a premium to the extent monthly outstanding balance credit insurance (where the premium satisfies the criteria for “calculated” on a monthly basis) is paid in the same month the charge is posted.

Final Rule

Definition of financing. The Bureau is adopting in § 1026.36(i)(2)(ii) the proposed definition of "financing" as proposed, with one modification. Under final § 1026.36(i)(2)(ii), "financing" occurs when a creditor treats a credit insurance premium as an amount owed and provides a consumer the right to defer payment of that obligation. The Bureau believes this clarification best conforms the concept of "financing" in § 1026.36(i) with Regulation Z's concept of an extension of "credit" in § 1026.2(a)(14), which is defined as "the right to defer payment of *debt* or to incur *debt* and defer its payment" (emphasis added). The Bureau also is adopting an additional clarification that granting the consumer this right to defer payment only constitutes financing if it provides the consumer the right to defer payment of the premiums or fees "beyond the period in which they are due."

The Bureau believes this additional clarification is appropriate in light of public comments, and also is consistent with the exclusion for credit insurance premiums that are calculated and paid in full on a monthly basis. As some commenters suggested , if the total amount owed by the consumer has not increased by the amount of the premium upon the close of the monthly period (after accounting for principal payments), then the creditor has not advanced funds or treated the premium as an addition to the consumer's "debt." Thus, consistent with Regulation Z's general concept of "credit" in § 1026.4(a)(14), the creditor is not treating the premium or fee as a debt obligation owed by the consumer and granting a right to defer payment of a debt, and is not "financing" the premium. This also is consistent with § 1026.36(i)(2)(iii), which provides that any premium "calculated" on a monthly basis would not be considered financed if it were also paid in full on a monthly basis—*i.e.*, that the premium was not treated as a debt that the consumer was given a right to defer payment of beyond the month in which it was due. Accordingly, a creditor will not be considered to have financed a credit insurance premium if, upon the close of the month, the consumer has failed to make the premium or fee payment, but the creditor does not incorporate that amount into the amount owed by the consumer. However, if the creditor treats the premium as an addition to the consumer's debt, such as by communicating to the consumer that the consumer *must* pay it to satisfy the consumer's obligations under the loan or by charging interest on the premium, the creditor will be considered to have financed the premium in violation of the prohibition.

The Bureau recognizes that there are some specific situations where it may be beneficial to consumers if creditors allow some period of time after the end of the monthly period in which a premium was due to decide if they would like to continue the insurance coverage. The Bureau believes the important distinction regarding whether or not the premium is considered to be financed hinges on whether the creditor treats the premium as a debt obligation due and then defers a right pay. But, as some commenters noted, as an alternative to the creditor adding an unpaid premium to the loan balance to create additional debt, a grace period could be provided during which the insurance remains in force unless the consumer chooses not to pay the premium (in which case the insurance contract is cancelled), the insurer's obligation to perform under the credit insurance contract could be suspended in the event of non-payment, or the insurance contract could be cancelled automatically if the premium is not paid. In these cases, the creditor may allow the consumer additional time to pay the premium and keep the insurance in force, but does not advance the amount of money necessary to meet the monthly credit insurance payment on the consumer's behalf and then *require* that the consumer pay the creditor—*i.e.*, the creditor does not treat the premium as a debt and then provide the consumer a right to defer payment of the premium or fee. The Bureau believes these practices would, in most cases, not arise to the level of "financing" unless the creditor treats the premium as a debt and then allows deferral of payment beyond the month in which it was due.

The Bureau believes similar logic would apply with respect to other situations, such as consumers who are offered forbearance, modification agreements, or are otherwise delinquent on their monthly payments. In these cases, a creditor that effectively pays the monthly premium on the consumer's behalf and then treats that amount as a debt owed to the creditor beyond the month in which it is due would be financing the premium for purposes of § 1026.36(i). For example, assume that a consumer has credit insurance and typically pays $50.00 per month for that product. If the consumer is granted a six-month forbearance of monthly payments by the creditor (and the credit insurance itself is not used to cover monthly payments, but simply remains as a monthly charge), the creditor "finances" for purposes of § 1026.36(i) if the creditor charges the consumer $50.00 each month without collecting payment and ultimately adds $300.00 to the consumer's debt. Similarly, if the same consumer were six months delinquent on his or her loan (meaning no payments have been received), the creditor would not be permitted to pay the credit insurance premiums on behalf of the consumer and then treat $300.00 as an additional amount owed.

The Bureau appreciates the remaining concerns raised by consumer groups, but disagrees with some of their analyses. Consumer groups suggested providing that a creditor finances credit insurance premiums or fees any time the amount charged to the consumer exceeds the premium filed with and not disapproved by the State insurance regulator. It is the Bureau's understanding that under some State insurance regulation practices, not all types of credit insurance rates (such as those determined by an actuarial method) must be filed with the regulator. More importantly, even when applicable rates are filed with a State insurance regulator, the fact that a consumer is being charged more than the filed rate does not necessarily mean the creditor is *financing* the premium, even if the creditor receives commissions from the credit insurer. A difference between the filed rate and the amount charged to the consumer could be the result of actions by the credit insurer, rather than the creditor.

The Bureau also disagrees that significant confusion about debt suspension products will be caused by the clarification that a creditor finances premiums or fees for credit insurance if it provides a consumer the right to defer payment of a credit insurance premium or fee. Debt suspension contracts permit the consumer to defer payments of *principal and interest*. The clarification the Bureau is adopting addresses granting a consumer a right to defer payments of credit insurance *premiums and fees*.

Application of the provision to single-premium credit insurance. The Bureau is also adding comment 36(i)-1 to clarify how the prohibition applies to single-premium and monthly-pay products. It clarifies that in the case of single-premium credit insurance, a creditor violates § 1026.36(i) by adding the credit insurance premium or fee to the amount owed by the consumer at closing. The comment states further that, in the case of monthly-pay credit insurance, a creditor violates § 1026.36(i) if, upon the close of the monthly period in which the premium or fee is due, the creditor includes the premium or fee in the amount owed by the consumer—and thus treats it not as a monthly charge that could be cancelled prior to being due, but as a "debt" that is owed by the consumer to the creditor, which the consumer then would have a right to pay at some later date.

Interest charged when the borrower is not granted a right to defer payment. The Bureau invited public comment on whether credit insurance premiums should be considered financed by a creditor only if the creditor imposes a finance charge on or in connection with the premium or fee. In doing so, the Bureau assumed that in some cases creditors were granting a consumer the right to defer payment and imposing a finance charge for that right, but in other cases creditors were not charging consumers for providing that right. The Bureau did not anticipate that creditors were charging interest on the credit insurance premium or fee even though no funds were being advanced on the consumer's behalf at the time they began charging interest, under the practice described by some commenters. However, the Bureau notes that consumer groups and several industry commenters have stated that, at least in some cases, creditors appear to be adding credit insurance premiums to a consumer's principal balance before the premium is due from the consumer—even though no funds are advanced on behalf of the consumer at that time. Interest then accrues on the increased principal until the consumer's subsequent payment is credited to the account. Commenters have pointed out that this is typically a very small amount of interest; one industry commenter noted that, on average, the amount of interest accrued due to this practice is 87 cents per consumer.

In such cases, the Bureau believes that the accruing interest does not indicate that the creditor has financed the premium precisely because, as several such creditors insist, they do not (and could not) advance any funds for the premium, and therefore could not add to the consumer's debt, until after the consumer's payment is actually due. Nevertheless (and even though the amount of interest charged may be very little), the Bureau believes that interest charged under such practices raises potential consumer protection concerns and may not be appropriate—although the reason it may be inappropriate is not because it indicates the creditor is financing the premium. Rather, the potential concerns arise if the creditor is charging the consumer additional interest on the premium *even though* the creditor is *not* financing the premium.

The Bureau notes that the scope of the § 1026.36(i) prohibition is limited to a creditor's practice of financing of premiums—which does not include treating the premium as an addition to the consumer's principal and charging interest on the addition before the premium is due.[51] Indeed, even under the proposed alternative definition of financing—which would have relied upon the creditor's imposing a "finance charge" in connection with the premium—this interest would not have fallen under the exclusion. The interest at issue would fail to meet the definition of a "finance charge" under § 1026.4, which is any charge imposed as an incident to or a condition of an extension of "credit." As discussed above, § 1026.2(a)(14) defines "credit" as "the right to defer payment of a debt or to incur debt and defer its payment"—and in the case of this particular practice there is neither a debt nor a right to defer payment prior to the point at which the charge is actually due. Thus, under either of the proposed definitions of financing, this practice would not have been subject to the prohibition.

However, the fact that imposing interest on a premium before it is due does not constitute "financing" the premium does not mean that such practices comply with other Federal or State requirements. The Bureau intends to monitor this practice in the future and may address this issue at another time, whether by rulemaking or other means. However, based on public comments received, the Bureau believes that credit unions and other small creditors should be able to mitigate any risk that may arise from this practice by not collecting the interest that accrues from the consumer. For example, some credit unions that face these accounting and data processing system limitations appear to add the premium to principal before the consumer's payment is due but do so without additional interest being charged to the consumer. The Bureau

[51] The same concerns do not seem to arise if a creditor adds the premium to a line labeled "principal" on a monthly statement due to accounting and data system limitations but does not otherwise treat the premium as an addition to the consumer's debt and does not charge interest on the addition.

believes credit unions or other creditors facing such system limitations may be able to credit any accrued interest back to the consumer timely, thereby mitigating consumer protection concerns.

3. Calculated and paid in full on a monthly basis.

The Proposal

The Bureau proposed to clarify in § 1026.36(i)(2)(iii) that credit insurance premiums or fees are calculated on a monthly basis if they are determined mathematically by multiplying a rate by the monthly outstanding balance (*e.g.*, the loan balance following the consumer's most recent monthly payment). As discussed above, § 1026.36(i) excludes from the prohibition on a creditor financing credit insurance premiums or fees any "credit insurance for which premiums or fees are calculated and paid in full on a monthly basis." Although it had considered the concerns raised by industry following the issuance of the 2013 Loan Originator Compensation Final Rule, the Bureau stated that it continued to believe that the more straightforward interpretation of the statutory language regarding a premium or fee that is "calculated…on a monthly basis" is a premium or fee that declines as the consumer pays down the outstanding principal balance. Credit insurance with this feature is often referred to as a "monthly outstanding balance," or M.O.B. credit insurance product. Level or levelized premiums or fees that are calculated by multiplying a rate by the initial loan amount or by a fixed monthly principal and interest payment are not calculated "on a monthly basis" in any meaningful way because the factors in the calculation do not change monthly (in contrast to the M.O.B. credit insurance product). Accordingly, under the proposed clarification, credit insurance could not have been categorically excluded from the scope of the prohibition on the ground that it is "calculated and fully paid on a monthly basis" if its premium or fee does not decline as the consumer pays down the outstanding principal balance. The Bureau noted that even if a particular premium calculation and payment arrangement provides for credit insurance premiums to be calculated on a monthly basis within the meaning of the proposed clarification, it must also provide for the premiums to be paid in full on a monthly basis (rather than added to principal, for example) to be categorically excluded from § 1026.36(i).

Comments

Most of the comments discussed above addressed the statutory exclusion as it relates to the definition of financing, but the Bureau also received some comments specifically addressing the exclusion. One credit insurance company, three state trade associations of credit unions, one national trade association of credit unions, and several consumer groups, legal services organizations, and fair housing organizations supported the Bureau's proposal clarifying what credit insurance premiums are calculated on a monthly basis. They agreed with the Bureau's statement that the most straightforward interpretation of a premium that is "calculated…on a monthly basis" is one that is determined mathematically by multiplying a rate by the monthly outstanding balance. Consumer groups urged the Bureau to clarify that the exclusion should apply only to a rate filed with and not disapproved by a State insurance regulator. A credit insurance company commenter urged the Bureau to clarify that the premium or fee is "paid in full on a monthly basis" if the consumer is contractually required to pay it in the same month in which the creditor "posts" it to the consumer's account, even if the consumer does not in fact pay a premium by the end of the monthly period.

Other credit insurance companies, a credit insurance trade association, several credit unions, and two state trade associations of credit unions stated that the Bureau's clarification was too narrow. They argued that any "monthly pay" credit insurance product should be excluded from the prohibition, regardless of whether the premium declines as the outstanding balance of the loan declines. They noted that model state legislation includes similar phrasing and has not been interpreted as being limited to products whose premiums decline as the loan balance declines. They stated that there was no indication that Congress intended a narrow meaning when it used similar language in the statutory prohibition.

Finally, one creditor trade association believed that the Bureau's proposal meant that levelized premiums necessarily amount to prohibited creditor financing of credit insurance and it opposed the Bureau's proposal on that basis. An actuarial firm noted that level premiums are an important option in credit insurance products and urged the Bureau not to ban them.

Final Rule

The Bureau is adopting the provision as proposed. The Bureau does not believe that similarities between the statutory provision and language in model state legislation cited by some commenters means that Congress intended the phrase "calculated…on a monthly basis" to include a premium that stays constant every month, rather than the more straightforward meaning discussed above. The Bureau disagrees with the commenter that urged the Bureau to deem a premium to have been "paid in full on a monthly basis" by a consumer simply because it is contractually required to be paid monthly. Instead, if the creditor does not receive the consumer's payment, then the analysis under this final rule's clarification on what constitutes a creditor's financing of credit insurance premiums or fees, discussed above, applies. Finally, the Bureau again emphasizes that a credit insurance product with a level or levelized premium is not prohibited by this final rule. For any credit insurance product that does not meet the conditions of the exclusion, this final rule's clarification on what constitutes a creditor's financing of credit insurance premiums or fees applies.

4. Description of creditors as at times acting as "passive conduits" for credit insurance premiums and fees.

The Proposal

The Bureau noted in the proposal that credit insurance companies, in their communications with the Bureau subsequent to issuance of the 2013 Loan Originator Compensation Final Rule, described creditors as acting as "passive conduits" collecting and transmitting monthly premiums from the consumer to a credit insurer, rather than advancing funds to an insurer and collecting them subsequently from the consumer. Under such a scenario described by the credit insurance companies, the Bureau stated its belief that a creditor would not likely be providing a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer within the meaning of the proposal, as discussed above. Similarly, the Bureau stated that, under the alternative interpretation that a creditor "finances" credit insurance only if it charges a "finance charge" on or in connection with the credit insurance premium or fee, as discussed above, a creditor that acts merely as a passive conduit for the payment of credit insurance premiums and fees to a credit insurer would not likely be charging such a finance charge. The Bureau stated that, on the other hand, a creditor that does not act merely as a passive conduit, but instead achieves a levelized premium by deferring payments, or portions of payments, due to a credit insurer for a monthly outstanding balance credit insurance product (or by imposing a finance charge incident to such deferment, under the alternative interpretation discussed above) would likely be considered to be financing the credit insurance premiums or fees.

The Bureau invited public comment on the extent to which creditors act other than as passive conduits in a manner that would constitute financing of credit insurance premiums or fees. Relatedly, the Bureau sought public comment on whether debt cancellation or suspension contracts, which may be provided by the creditor itself or its affiliate, and not a separate insurance company, may warrant different or specialized treatment under the provision because a creditor would not, by nature, act as a "passive conduit" to an insurance provider. The Bureau specifically invited public comment on what actions by a creditor should or should not be considered financing of debt cancellation or suspension contract fees, when the creditor is a party to the debt cancellation or suspension contract and payments for principal, interest, and the debt cancellation or suspension contract are retained by the creditor.

Comments

Several commenters objected to the Bureau's inclusion in preamble of the credit insurance industry's description of creditors as "passive conduits" that merely transmit consumers' credit insurance premiums on to credit insurance companies. Two credit insurance companies conceded that they had described creditors in this way but expressed concern that the Bureau's use of the term in the preamble might be misinterpreted. They stated that the description was intended to refer to one example of when a creditor was not financing credit insurance premiums, but that it might be interpreted to mean that when a creditor acts other than as a "passive conduit" for credit insurance premiums, it is necessarily financing them. Further, they stated that the Bureau's discussion in the preamble of an example of a creditor acting other than as a passive conduit (*i.e.*, when the creditor achieves a levelized premium by deferring payments, or portions of payments, due to a credit insurer) does not ever happen in practice. In addition, industry commenters stated that debt cancellation or suspension contracts should not be treated differently under the prohibition, but instead are charged and collected functionally in the same manner as traditional insurance products, except that they generally are not regulated by state insurance commissions or subject to rate-filing requirements.

Consumer groups asserted that creditors never act as passive conduits because creditors receive substantial commissions from credit insurance companies for the policies they sell and because the creditors are the primary beneficiaries of the credit insurance. Accordingly, they stated that, whenever a consumer is charged more in total premiums for a levelized credit insurance product than it would be charged for a monthly outstanding balance product with equivalent coverage, the creditor should be deemed to have financed the credit insurance premium, even if the insurer, rather than the creditor, accomplished the "levelizing" of the premium.

Final Rule

With respect to the Bureau's discussion of creditors as "passive conduits" of credit insurance premiums in the preamble of the proposed rule, the Bureau did not propose to promulgate, and is not promulgating in this final rule, a provision adopting that concept. Instead, as the Bureau explained in the proposal, the description was offered by credit insurance companies in their discussions with the Bureau, and the Bureau referred to it in the proposal as a means to elicit public comments and information on creditor practices that do not fit that description, especially with respect to debt cancellation and debt suspension products. The Bureau did not state a belief that creditors do act as passive conduits, or that any action that does not fit that description amounts to a violation of the provision. In addition, based on public comments it received, the Bureau does not believe it is necessary to adopt a provision that treats debt suspension or debt cancellation fees differently from credit insurance products.

VII. Section 1022(b)(2) of the Dodd-Frank Act

A. Overview

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts.[52] In addition, the Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, HUD, the Federal Housing Finance Agency, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

As noted above, this rule makes amendments to some of the final mortgage rules issued by the Bureau in January of 2013.[53] These amendments focus primarily on clarifying or revising (1) provisions of Regulation X's related to information requests and error notices; (2) loss mitigation procedures under Regulation X's servicing provisions; (3) amounts counted as loan originator compensation to retailers of manufactured homes and their employees for purposes of applying points and fees thresholds under HOEPA and the qualified mortgage rules in Regulation Z; (4) determination of which creditors operate predominantly in "rural" or "underserved" areas for various purposes under the mortgage regulations; (5) application of the loan originator compensation rules to bank tellers and similar staff; and (6) the prohibition on creditor-financed credit insurance. The Bureau also is adjusting the effective dates for certain provisions adopted by the 2013 Loan Originator Compensation Final Rule and making technical and wording changes for clarification purposes to Regulations B, X, and Z.

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[52] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[53] For convenience, the reference to these January 2013 rules is also meant to encompass the rules issued in May 2013 that amended the January rules, including the May 2013 Escrows Final Rule.

The Bureau notes that for some analyses, there are limited data available with which to quantify the potential costs, benefits and impacts of this final rule. In particular, the Bureau did not receive comments specifically addressing the Section 1022 analysis in the proposed rule. Still, general economic principles as well as the information and analysis on which the January rules were based provide insight into the benefits, costs and impacts and where relevant, the analysis provides a qualitative discussion of the benefits, cost and impacts of the final rule.

B. Potential Benefits and Costs to Consumers and Covered Persons

The Bureau believes that, compared to the baseline established by the final rules issued in January 2013,[54] an important benefit of most of the provisions of this final rule to both consumers and covered persons is an increase in clarity and precision of the regulations and an accompanying reduction in compliance costs. Other benefits and costs are considered below.

As described above, the Bureau is amending the commentary to § 1024.35(c) and § 1024.36(b). As adopted by the 2013 Mortgage Servicing Rules, these provisions and accompanying commentary require a servicer that has established an exclusive address at which it will receive communications pursuant to § 1024.35 and § 1024.36 to disclose that address whenever it provides a borrower any contact information for assistance from the servicer. The Bureau is amending the commentary so that the exclusive address need be provided on the written notice that designates the specific address; the periodic statement or coupon book required pursuant to 12 CFR 1026.41; any website the servicer maintains in connection with the servicing of the loan; and any notice required pursuant to §§ 1024.39 or .41 that includes contact information for assistance.

[54] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline.

These amendments reduce the costs to servicers of complying with § 1024.35(c) and § 1024.36(b) of the final rule by reducing the number of documents and other sources of information that must be modified to include the designated address. The Bureau believes that these amendments will cause at most a minimal reduction in the benefits to consumers. A borrower looking for the address to which to send a notice of error or a request for information would likely consult the servicer's website, the borrower's statement or coupon book, any loss mitigation documents, or perhaps the written notice designating the specific address. Further, servicers have an obligation, established by the January rule, to maintain policies and procedures reasonably designed to achieve the objective of informing borrowers of the procedures for submitting written notices of error and written information requests. Thus, a servicer should provide the proper address to a borrower who contacts the servicer for the address to which to send a notice of error or a request for information. In light of these two parallel requirements, the Bureau believes borrowers will still have ready access to the exclusive address and are not likely to send a notice of error or a request for information to an improper address. Alternatives that would require the designated address on even fewer documents or communications would further reduce the compliance costs to servicers but would increase the risk that borrowers who wish to send a notice of error or a request for information would consult a document that did not include the exclusive address and would misroute their notice or request accordingly.

The Bureau is amending § 1024.35(g)(1)(iii)(B) (untimely notices of error) and § 1024.36(f)(1)(v)(B) (untimely requests for information), which, as adopted in January, provided respectively that the notice or request is untimely if it is delivered to the servicer more than one year after a mortgage loan balance was paid in full. Under the amended provisions, the one-year period designated by these requirements will begin when a mortgage loan is discharged, such as through foreclosure or deed in lieu of foreclosure, even if the loan balance was not paid in full.

These amendments reduce costs to servicers by increasing the number of situations in which a notice or request is untimely and servicers are therefore not required to comply with certain requirements of § 1024.35 or § 1024.36. To the extent servicers no longer respond to notices or requests that are untimely because of these amendments, the lack of a response may impose some cost to consumers. The Bureau does not have data on the frequency with which borrowers with a mortgage that is terminated without being paid in full also assert an error or request information (within the scope of these requirements) more than one year after such termination, nor does the Bureau have information on the subsequent outcomes for such borrowers. However, the Bureau believes that one year after a mortgage loan is discharged generally provides sufficient time for borrowers to assert errors or request information. Consequently, an inability to obtain a response to such a notice or request during the longer period the rule prescribed before these amendments would constitute at most a minimal impact on the benefits to consumers.

The Bureau is amending the commentary to § 1024.41(b)(2)(i) and adding new § 1024.41(c)(2)(iv) to address the situation in which a servicer determines that additional information from the borrower is needed to complete an evaluation of a loss mitigation application after the servicer has informed the borrower, via the notice pursuant to § 1026.41(b)(2)(i)(B), that the loss mitigation application is complete or the borrower provided the particular information identified as missing in an original notice. In summary, the servicer must request the additional information and provide a reasonable time for the borrower to respond. If the borrower provides the additional information, the 30-day evaluation period within which to evaluate the borrower for all loss mitigation options available to the borrower begins as of the date the borrower provides the remaining information. The borrower, on the other hand, receives the protections against foreclosure during the period provided to gather the supplemental information. If the borrower provides the additional information, the borrower will also receive the right to appeal and other rights as though the application were actually complete when either the borrower submitted the original loss mitigation application (if the notice informed the borrower that the application was complete) or the borrower provided the particular information identified in the original notice (if the notice informed the borrower that the application was incomplete). In situations in which a servicer determines that supplemental information from the borrower is needed after sending the § 1024.41(b)(2)(i)(B) notice, these dates will generally be earlier than the date on which the borrower provides the supplemental information to make the application complete. Accordingly, the amended final rule provides greater consumer protections than the original final rule or the proposal.

The costs to the servicer of these amendments are the costs of complying that are incremental to the baseline costs arising from the 2013 Mortgage Servicing Final Rules. The Bureau believes that in all cases these costs are small given other provisions of the 2013 Mortgage Servicing Final Rules. As discussed above, under that final rule, servicers are required to review a loss mitigation application to determine whether it is complete or incomplete, to have policies and procedures reasonably designed to achieve the objectives of identifying documents and information that a borrower is required to submit to complete an otherwise incomplete loss mitigation application, and to exercise reasonable diligence in obtaining documents and information necessary to complete an incomplete application. Thus, the 2013 Mortgage Servicing Final Rules already obligated the servicer to exercise reasonable diligence to bring to completion an application that was facially complete but in fact lacked information necessary for review. The servicer would therefore, even absent the new provisions, have the personnel and infrastructure needed to contact the borrower for additional information and evaluate the application since these are required to comply with the other obligations stated above. Thus, the Bureau does not believe that the costs of complying with the amendment are significant.

The benefits to consumers of these amendments are the benefits of servicers following the procedures adopted by this final rule that are incremental to the baseline benefits defined by the final servicing rule. The amendment requires servicers to promptly request any additional information or documents needed to complete a facially complete loss mitigation application, and also provides borrowers with a reasonable amount of time to provide any such documents or information. The amendment delays the 30-day period during which a servicer must evaluate a complete application until after the borrower has provided such documents or information. This additional time benefits consumers by encouraging thorough review of these applications. Further, the rule will make clear that a servicer has fulfilled its obligations if it follows the new procedure. This encourages servicers to acknowledge and rectify their errors and therefore increases the likelihood that servicers will make loss mitigation decisions on the basis of complete information.

As an alternative, if borrowers receive protections from the date on which the application is actually complete (instead of facially complete), it is more likely the date would be past the 120th day of delinquency or closer to the date of a foreclosure sale. Servicers might have slightly lower costs under this alternative, perhaps from a shorter period of providing continuity of contact and monitoring the property, but borrowers would receive fewer protections against foreclosure. Further, servicers that wanted to provide fewer protections could more easily manipulate the date on which an application is actually complete than the date on which it is facially complete given that facial completeness is determined by a mandated timeline and disclosure and by how quickly the consumer provides any missing information identified in the disclosure.

The Bureau is amending the § 1024.41(b)(2)(ii) time period disclosure requirement, which requires a servicer to provide a date by which a borrower should submit any missing documents and information necessary to make a loss mitigation application complete. As explained above, § 1024.41(b)(2)(ii) as originally adopted requires the servicer to notify the borrower that the borrower should submit such missing documents and information by the earliest of certain dates. This requirement would have applied even if the nearest date would leave the borrower with very little time to assemble the missing information. The amendment requires the servicer to provide a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. Commentary provides additional guidance and advises a servicer to select the nearest of four key dates that is at least seven days in the future. This change presents some tradeoff in benefits and costs for consumers, but on balance the Bureau believes that it will be beneficial to consumers. Consumers who would have been provided impracticable dates for responding in the initial notice generally benefit from this amendment by being provided with useful information. In particular, the Bureau believes that some consumers who might have failed to complete the loss mitigation application altogether when faced with an impracticable date for submitting materials would be more likely to complete the application by a reasonable date as determined under the amended rule, and thus to secure consideration for foreclosure alternatives and some of the important procedural rights available to them under the loss mitigation regulations. Servicers will incur one-time costs for changes to software to check whether the nearest key date is closer than the rule permits and provide the later date in this case. Servicers may also incur costs associated with receiving additional complete loss mitigation applications.

The Bureau is adding a new provision in § 1024.41(b)(3) addressing how borrower protections are determined when no foreclosure sale is scheduled as of the date a complete loss mitigation application is received or when a foreclosure sale is rescheduled after receipt of a complete application. Under the final servicing rule, a servicer could, arguably, initiate the foreclosure process on day 121 of delinquency, receive a complete loss mitigation application from a borrower, schedule a foreclosure sale within 90 days, and then provide fewer protections than those afforded to loss mitigation applications received at least 90 days before a scheduled foreclosure sale. The new provisions provide that if no foreclosure sale has been scheduled as of the date that a complete loss mitigation application is received, the application shall be treated as if it were received at least 90 days before a scheduled foreclosure sale. In addition, the new provisions make clear that whether certain foreclosure protections and other rights in the rule apply depends on the date for which a foreclosure sale was scheduled at the time of a borrower's complete application. If the scheduled date later changes, the foreclosure protections and other rights that arose at the time of the complete application do not change.

The Bureau recognizes that the new provisions may reduce some of the flexibility servicers had under the 2013 Mortgage Servicing Rule. This is a cost to servicers. Further, some servicers in possession of an incomplete loss mitigation application on day 121 of delinquency who would not have scheduled a foreclosure sale may now do so in order to avoid the risk of a longer time to foreclosure. As a result, certain borrowers may have less time to respond to a loss mitigation offer and no right to appeal a denial. On the other hand, borrowers with servicers that do not accelerate the scheduling of foreclosure sales have clearer rights and most likely more time to respond to a loss mitigation offer and a right to appeal a denial. The Bureau cannot quantify these different effects, but believes that they are most likely small given the wide range of other factors that determine the time to foreclosure.

The Bureau is modifying § 1024.41(c)(2) to allow servicers to offer certain short-term forbearances to borrowers, notwithstanding the prohibition on servicers offering a loss mitigation option to a borrower based on the review of an incomplete loss mitigation application. This provision imposes no costs on servicers because it does not impose any new obligations on servicers relative to the final rule. The provision benefits servicers by providing a relatively low-cost way for servicers to provide borrowers with a particular loss mitigation option. Similarly, the provision imposes no costs on borrowers since the borrower can reject forbearance based on review of an incomplete loss mitigation option, provide a complete loss mitigation application, and be reviewed for all loss mitigation options available to the borrower (and other protections) as under the final rule. The provision benefits borrowers by providing borrowers with a particular loss mitigation option on the basis of an incomplete application and therefore without exhausting the option to have the servicer review a complete loss mitigation application.

As discussed above, the Bureau is conscious of the fact that some servicers have significantly exacerbated borrowers' financial difficulties in the past by using short-term forbearance programs inappropriately instead of reviewing the borrowers for long-term options. Thus, in developing this provision, the Bureau has sought to ensure that borrowers would receive significant benefits from forbearance based on review of an incomplete loss mitigation option with minimal additional risk or loss of consumer protections. However, while a long forbearance period creates risks to consumers by generating a significant debt and increasing the chance the borrower might have been better off with an option that the servicer would have offered after evaluating a complete loss mitigation application, the comments received also emphasized heavily that very short forbearance periods do not provide much benefit to borrowers in situations in which forbearance is being used appropriately because they do not allow sufficient time for borrowers to remedy the short-term problems that created the need for forbearance and resume making payments on their loans. The Bureau does not have data with which to identify the average or maximum length of time of forbearance that would balance these factors. Further, the risks to consumers from not specifying a maximum length of time for forbearance are mitigated somewhat by the fact that a borrower who receives a forbearance agreement without having submitted a complete loss mitigation application can trigger a review for loss mitigation options by submitting a complete application more than 37 days before a scheduled foreclosure sale. Taking these factors into account, the Bureau believes that borrowers benefit more from the new forbearance provisions than they would from alternatives that imposed a maximum length of time on forbearance.

The Bureau is also clarifying the "first notice or filing" standard in § 1024.41(f). The 2013 Mortgage Servicing Final Rules prohibited servicers from making the "first notice or filing" under state law during the first 120 days of the borrower's delinquency, but interpreted "first notice or filing" broadly to include notices of default or other notices required by applicable law in order to pursue acceleration of a mortgage loan obligation or the sale of a property securing a mortgage loan obligation. The Bureau is modifying this interpretation and adopting a narrower construction that more closely tracks the Federal Housing Administration's "first legal" standard. The Bureau also is clarifying how the rule works across states with different foreclosure laws—such as in “judicial” states where foreclosure requires an action filed in court and in “non-judicial” states where foreclosure requires notice or publication of sale.

The Bureau believes these amendments will benefit servicers by clarifying the scope of actions prohibited during a borrower’s first 120 days in accordance with a familiar standard. In addition, the amendments will not unduly delay foreclosures in states that provide statutory or other notice and cure processes in advance of a foreclosure action or sale by forcing servicers to wait 120 days to send such a notice. The Bureau believes these amendments will benefit borrowers because they will allow notices that do not initiate foreclosure, but instead are intended to provide borrowers with information about counseling and other loss mitigation resources as a means of avoiding foreclosure during the first 120 days of delinquency, when those notices are most likely to benefit borrowers. The Bureau recognizes the possibility that these amendments may, in certain States, allow foreclosure to be initiated more quickly than under the Final Rule, but the Bureau believes that the amendments are beneficial to borrowers overall.

In addition, the Bureau is modifying or clarifying other Regulation X loss mitigation provisions. The Bureau is amending § 1024.41(c)(1)(ii) to state explicitly that the notice required by § 1024.41(c)(1)(ii) must state the deadline for accepting or rejecting a servicer’s offer of a loss mitigation option. The Bureau is amending § 1024.41(h)(4) to provide expressly that the notice informing a borrower of the determination of his or her appeal must also state the amount of time the borrower has to accept or reject an offer of a loss mitigation option after the notice is provided to the borrower. The Bureau is amending § 1024.41(f)(1), the prohibition on referral to foreclosure until after the 120th day of delinquency, by exempting a foreclosure based on a borrower’s violation of a due-on-sale clause or in which the servicer is joining the foreclosure action of a subordinate lienholder. Finally, the Bureau is clarifying the requirement in § 1024.41(d)(1) (re-codified as § 1024.41(d)) that a servicer must disclose the reasons for the denial of any trial or permanent loan modification option available to the borrower to make clear that this provision requires the servicer to disclose only determinations actually made by the servicer and does not require a servicer to continue evaluating additional factors after a decision has been established. The Bureau believes these modifications will only minimally increase costs to servicers and the clarifications will likely benefit both servicers and consumers, in part through reduced implementation costs.

Two of the sets of modifications to the Regulation Z provisions involve loan originator compensation. The Bureau is clarifying for retailers of manufactured homes and their employees what compensation can be attributed to a transaction at the time the interest rate is set and must be included in the points and fees thresholds for qualified mortgages and high-cost mortgages under HOEPA. As discussed above, the final rule will exclude from points and fees of loan originator compensation paid by a retailer of manufactured homes to its employees and will clarify that the sales price of a manufactured home does not include loan originator compensation that must be included in points and fees. Both of these changes will reduce the burden for creditors in manufactured home transactions by eliminating the need for them in certain circumstances to attempt to determine what, if any, retailer employee compensation and what, if any, part of the sales price will count as loan originator compensation that must be included in points and fees. This amendment is also likely to lower slightly the amount of money counted toward the points and fees thresholds on the covered loans. As a result, keeping all other provisions of a given loan fixed, this will result in a greater number of loans to be eligible to be qualified mortgages. For such loans, the costs of origination may be slightly lower as a result of the slightly decreased liability for the lender and any assignees and for possibly decreased compliance costs. Consumers may benefit from slightly increased access to credit and lower costs on the affected loans, however these consumers will also not have the added consumer protections that accompany loans made under the general ability-to-repay provisions. The lower amount of points and fees may also lead fewer loans to be above the points and fees triggers for high-cost mortgages under HOEPA: This should make these loans both more available and offered at a lower cost to consumers, though consumers will not have the added consumer protections that apply to high-cost mortgages. A more detailed discussion of these effects is contained in the discussion of benefits, costs, and impacts in part VII of the 2013 ATR Final Rule and the 2013 HOEPA Final Rule.

The Bureau also is revising the commentary addressing when employees of a creditor or loan originator in certain administrative or clerical roles (*e.g.*, tellers or greeters) may become "loan originators" under the 2013 Loan Originator Compensation Rule, and therefore subject to that Rule's requirements applicable to loan originators, such as qualification requirements and restrictions on certain compensation practices. As noted above, classifying such individuals as loan originators would subject them to the requirements applicable to loan originators with, in the Bureau's view, little appreciable benefit for consumers. Removing them from this classification should lower compliance costs including those related to SAFE Act training, certification requirements, and compensation restrictions.

The final rule's provisions regarding credit insurance clarify what constitutes financing of such premiums by a creditor, and is therefore generally prohibited under the Dodd-Frank Act with regard to credit insurance on mortgage loans. The final rule will also clarify when credit insurance premiums are considered to be calculated and paid on a monthly basis for purposes of a statutory exclusion from the prohibition for certain credit insurance premium calculation and payment arrangements. As noted earlier, the Bureau believes that language in the preamble to the 2013 Loan Originator Compensation Final Rule led to some confusion among creditors and credit insurance providers regarding whether credit insurance products were prohibited under the rule based on how their premiums are calculated. The Bureau is now clarifying that the prohibition only extends to creditors financing credit insurance premiums, and providing additional guidance on what constitutes creditor financing and what is excluded from the prohibition. Specifically, the Bureau is finalizing a modified version of the clarification it proposed that provides increased clarity regarding the application of the rule to certain products—particularly to insurance with “level” or “levelized” premiums—and this should benefit both creditors and providers of credit insurance products. As discussed above, the modification will, among other things, permit creditors to continue providing credit insurance products, including those with “level” or “levelized” premiums, so long as the premium is not treated as an obligation owed by the consumer beyond the month in which it is due. The Bureau also solicited comment on an alternative clarification, and believes on the basis of comments that the alternative is less clear and no more protective of consumers than the provision the Bureau is finalizing.

The final rule will also make two adjustments to provisions that provide certain exceptions for creditors operating predominantly in “rural” or “underserved” areas during the next two years, while the Bureau reexamines the definitions of “rural” and “underserved” as it recently announced in the May 2013 ATR Final Rule. Specifically, the final rule will extend an exception to the general prohibition on balloon features for high-cost mortgages under the 2013 HOEPA Final Rule that is available to certain loans made by small creditors who operate predominantly in rural or underserved areas temporarily to all small creditors, regardless of their geographic operations. The final rule will also amend an exemption from the requirement to maintain escrows for higher-priced mortgage loans under the 2013 Escrow Final Rule that is available to small creditors that extended more than 50 percent of their total covered transactions secured by a first lien in "rural" or "underserved" counties during the preceding calendar year to allow small creditors to qualify for the exemption if they made more than 50 percent of their covered transactions in "rural" or "underserved" counties during any of the previous three calendar years.

As noted above, the Bureau believes expanding the balloon-payment exception for high-cost mortgages to allow certain small creditors operating in areas that do not qualify as "rural" or "underserved" to continue to originate certain high-cost mortgages with balloon payments during the next two years will benefit creditors who might be unable to convert to offering adjustable rate mortgages by the time the final rules take effect in January 2014. The final rule will also promote consistency between HOEPA requirements and the May 2013 ATR Final Rule, thereby facilitating compliance for creditors. The Bureau believes that the final rule will also benefit consumers by increasing access to credit relative to the 2013 HOEPA Final Rule. Although balloon loans can in some cases increase risks for consumers, the Bureau believes that those risks are appropriately mitigated in these circumstances because the balloon loans must meet the requirements for qualified mortgages in order to qualify for the exception. This includes certain restrictions on the amount of up-front points and fees and various loan features, as well as a requirement that the loans be held on portfolio by the small creditor. These requirements reduce the risk of potentially abusive lending practices and provide strong incentives for the creditor to underwrite the loan appropriately.

The amendment to the qualifications for the exemption from the escrow requirements should minimize the disruptions from any changes in the categorization of certain counties while the Bureau is reevaluating the underlying definitions. This in turn should lower compliance costs for certain creditors during the interim period. Consumers may benefit from greater access to credit and lower costs, but in return will not receive the benefits of an escrow account. A more detailed discussion of these effects is contained in the discussion of benefits, costs, and impacts in part VII of the 2013 Escrows Final Rule.

C. Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, As Described in Section 1026; the Impact of the Provisions on Consumers in Rural Areas; Impact on Access to Consumer Financial Products and Services

The final rule is generally not expected to have a differential impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026. The exceptions are those provisions related to the definitions of “rural” and “underserved” which directly impact entities with under $2 billion in total assets. The final rule may have some differential impacts on consumers in rural areas. To the extent that manufactured housing loans, higher-priced mortgage loans, high-cost loans or balloon loans are more prevalent in these areas, the relevant provisions may have slightly greater impacts. As discussed above, costs for creditors in these areas should be reduced; consumers should benefit from increased access to credit and lower costs, though they will not have access to the heightened protections afforded by various provisions. Given the nature and limited scope of the changes in the final rule, the Bureau does not believe that the final rule will reduce consumers’ access to consumer financial products and services.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[55] These analyses must "describe the impact of the proposed rule on small entities."[56] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities,[57] or if the agency considers a series of closely related rules as one rule for purposes of complying with the IRFA or FRFA requirements.[58] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[59]

This rulemaking is part of a series of rules that have revised and expanded the regulatory requirements for entities that originate or service mortgage loans. As noted above, in January, 2013, the Bureau issued the 2013 ATR Final Rule, 2013 Escrows Final Rule, 2013 HOEPA Final Rule, 2013 Mortgage Servicing Final Rules, and the 2013 Loan Originator Compensation Final Rule. Since January 2013, the Bureau also has issued the May 2013 ATR Final Rule, May 2013 Escrows Final Rule, and the 2013 Effective Date Final Rule, along with Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z).[60] The Supplementary Information to each of these rules set forth

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[55] 5 U.S.C. 601 *et. seq.*
[56] 5 U.S.C. 603(a). For purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).
[57] 5 U.S.C. 605(b).
[58] 5 U.S.C. 605(c).
[59] 5 U.S.C. 609.
[60] 78 FR 44686 (July 24, 2013).

the Bureau's analyses and determinations under the RFA with respect to those rules. Because these rules qualify as "a series of closely related rules," for purposes of the RFA, the Bureau relies on those analyses and determines that it has met or exceeded the IRFA and FRFA requirements.

In the alternative, the Bureau also concludes that the final rule will not have a significant impact on a substantial number of small entities. As noted, this final rule generally clarifies the existing rule and to the extent any changes are substantive, these changes will not have a material impact on small entities. The provisions related to servicing do not apply to many small entities under the small servicer exemption (and to the extent that they do, small entities will benefit from the same increased flexibility under the proposed provisions as other servicers), while the provisions related to loan originator compensation and the "rural" and "underserved" definitions lower the regulatory burden and possible compliance costs for affected entities. Therefore, the undersigned certifies that the rule will not have a significant impact on a substantial number of small entities.

IX. Paperwork Reduction Act

This final rule amends 12 CFR Part 1002 (Regulation B) which implements the Equal Credit Opportunity Act, 12 CFR Part 1026 (Regulation Z), which implements the Truth in Lending Act (TILA), and 12 CFR Part 1024 (Regulation X), which implements the Real Estate Settlement Procedures Act (RESPA). Regulations B, Z and X currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation B is 3170–0013, for Regulation Z is 3170–0015 and for Regulation X is 3170–0016. However, the Bureau has determined that this proposed rule would not materially alter these collections of information or impose any new recordkeeping, reporting, or disclosure requirements on the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects

12 CFR Part 1002

Aged, Banks, Banking, Civil rights, Consumer protection, Credit, Credit unions, Discrimination, Fair lending, Marital status discrimination, National banks, National origin discrimination, Penalties, Race discrimination, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination.

12 CFR Part 1024

Condominiums, Consumer protection, Housing, Mortgage servicing, Mortgages, Reporting and recordkeeping.

12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends 12 CFR parts 1002, 1024, and 1026 as set forth below:

PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

1. The authority citation for part 1002 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b.

2. Appendix A to Part 1002 is amended by revising paragraph 2.d to read as follows:

Appendix A to Part 1002—Federal Agencies To Be Listed in Adverse Action Notices

* * * * *

2. * * *

d. *Federal Credit Unions:* National Credit Union Administration, Office of Consumer Protection, 1775 Duke Street, Alexandria, VA 22314.

* * * * *

3. In Supplement I to Part 1002, under *Section 1002.14,* under *Paragraph 14(b)(3) Valuation*, as amended January 31, 2013, at 78 FR 7250, paragraphs 1.i and 3.v are revised and paragraph 3.vi is added to read as follows:

Supplement I to Part 1002—Official Interpretations

* * * * *

Section 1002.14—Rules on Providing Appraisals and Valuations

* * * * *

14(b)(3) Valuation.

1. * * *

i. A report prepared by an appraiser (whether or not licensed or certified) including the appraiser's estimate of the property's value or opinion of value.

* * * * *

3. * * *

v. Reports reflecting property inspections that do not provide an estimate of the value of the property and are not used to develop an estimate of the value of the property.

vi. Appraisal reviews that do not include the appraiser's estimate of the property's value or opinion of value.

* * * * *

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

4. The authority citation for part 1024 continues to read as follows:

Authority: 12 U.S.C. 2603-2605, 2607, 2609, 2617, 5512, 5532, 5581.

Subpart A—General

5. Section 1024.30, as amended February 14, 2013, at 78 FR 10695 is amended by revising paragraph (a) to read as follows:

§ 1024.30 Scope.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, this subpart applies to any mortgage loan, as that term is defined in § 1024.31.

* * * * *

6. Section 1024.35, as amended February 14, 2013, at 78 FR 10695 is amended by revising paragraph (g)(1)(iii)(B) to read as follows:

§ 1024.35 Error resolution procedures.

* * * * *

(g) *** * ***

(1) *** * ***

(iii) *** * ***

(B) The mortgage loan is discharged.

* * * * *

7. Section 1024.36, as amended February 14, 2013, at 78 FR 10695, is amended by revising paragraph (f)(1)(v)(B) to read as follows:

§ 1024.36 Requests for information.

* * * * *

(f) *** * ***

(1) * * *

(v) * * *

(B) The mortgage loan is discharged.

* * * * *

8. Section 1024.39, as amended February 14, 2013, at 78 FR 10695, is amended by revising paragraphs (b)(1) and (3) to read as follows:

§ 1024.39 Early intervention requirements for certain borrowers.

* * * * *

(b) *Written notice*. (1) *Notice required*. Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section not later than the 45th day of the borrower's delinquency. A servicer is not required to provide the written notice more than once during any 180-day period.

* * * * *

(3) *Model clauses.* Model clauses MS-4(A), MS-4(B), and MS-4(C), in appendix MS-4 to this part may be used to comply with the requirements of this paragraph (b).

* * * * *

9. Section 1024.41, as amended February 14, 2013, at 78 FR 10695, is amended by revising paragraphs (b)(2)(ii), (c)(1)(ii), (c)(2)(i), (d), (f)(1), (h)(4), and (j) and by adding paragraphs (b)(3), (c)(2)(iii), and (c)(2)(iv) to read as follows:

§ 1024.41 Loss mitigation procedures.

* * * * *

(b) * * *

(2) * * *

(ii) *Time period disclosure*. The notice required pursuant to paragraph (b)(2)(i)(B) of this section must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete.

(3) *Determining Protections*. To the extent a determination of whether protections under this section apply to a borrower is made on the basis of the number of days between when a complete loss mitigation application is received and when a foreclosure sale occurs, such determination shall be made as of the date a complete loss mitigation application is received.

(c) * * *

(1) * * *

(ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section, if applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section.

(2) * * *

(i) *In general.* Except as set forth in paragraphs (c)(2)(ii) and (iii) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

* * * * *

(iii) *Payment forbearance.* Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a short-term payment forbearance program to a borrower based upon an evaluation of an incomplete loss mitigation application. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a payment forbearance program offered pursuant to this section.

(iv) *Facially complete application.* If a borrower submits all the missing documents and information as stated in the notice required pursuant to § 1026.41(b)(2)(i)(B), or no additional information is requested in such notice, the application shall be considered facially complete. If the servicer later discovers additional information or corrections to a previously submitted document are required to complete the application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for the purposes of paragraphs (f)(2) and (g) of this section until the borrower is given a reasonable opportunity to complete the application. If the borrower completes the application within this period, the application shall be considered complete as of the date it was facially complete, for the purposes of paragraphs (d), (e), (f)(2), (g), and (h) of this section, and as of the date the application was actually complete for the purposes of paragraph (c). A servicer that complies with this paragraph will be deemed to have fulfilled its obligation to provide an accurate notice under paragraph (b)(2)(i)(B).

(d) *Denial of loan modification options.* If a borrower's complete loss mitigation application is denied for any trial or permanent loan modification option available to the borrower pursuant to paragraph (c) of this section, a servicer shall state in the notice sent to the borrower pursuant to paragraph (c)(1)(ii) of this section the specific reason or reasons for the servicer's determination for each such trial or permanent loan modification option and, if applicable, that the borrower was not evaluated on other criteria.

*   *   *   *   *

(f) * * *

(1) *Pre-foreclosure review period.* A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

(i) A borrower's mortgage loan obligation is more than 120 days delinquent;

(ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or

(iii) The servicer is joining the foreclosure action of a subordinate lienholder.

*   *   *   *   *

(h) * * *

(4) *Appeal determination.* Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option based upon the appeal and, if applicable, how long the borrower has to accept or reject such an offer or a prior offer of a loss mitigation option. A servicer may require that a borrower accept or reject an offer of a loss mitigation option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer's determination under this paragraph is not subject to any further appeal.

*   *   *   *   *

(j) *Small servicer requirements.* A small servicer shall be subject to the prohibition on foreclosure referral in paragraph (f)(1) of this section. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.

10. Appendix MS-3 to Part 1024, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by:

a. Revising the entry for MS-3(D) in the table of contents at the beginning of the appendix, and

b. Revising the heading of MS-3(D).

The amendments read as follows:

Appendix MS-3 to Part 1024

* * * * *

MS-3(D) – Model Form for Renewal or Replacement of Force-Placed Insurance Notice Containing Information Required by § 1024.37(e)(2)

* * * * *

11. In Supplement I to Part 1024, as amended February 14, 2013, at 78 FR 10695:

a. Under *Section 1024.17—Escrow Accounts*, the heading for 17(k)(5)(ii) is revised.

b. Under *Section 1024.33—Mortgage Servicing Transfers*:

i. Under *Paragraph 33(a) Servicing Disclosure Statement*, paragraph 1 is revised.

ii. Under *Paragraph 33(c)(1) Payments not considered late*, paragraph 2 is revised.

c. Under *Section 1024.35—Error Resolution Procedures, Paragraph 35(c)*, paragraph 2 is revised.

d. Under *Section 1024.36—Request for Information, Paragraph 36(b)*, paragraph 2 is revised.

e. Under *Section 1024.38—General Servicing Policies, Procedures and Requirements,* *Paragraph 38(b)(5),*paragraph 3 is added.

f. The heading for *Section 1024.41* is revised.

g. Under *Section 1024.41—Loss Mitigation Procedures*:

i. *Paragraphs 41(b)(2)*, *41(b)(3)*, *41(c)(2)(iii)*, and *41(c)(2)(iv)* are added.

ii. The heading for *paragraphs 41(c) is* revised.

iii. Under newly designated 41(c), *paragraph (c)(2)(iii)* is added.

iv. The heading *Paragraph 41(d)(1)* is removed.

v. Under *paragraph 41(d),* paragraph 3 is redesignated as *Paragraph(c)(1),* paragraph 4, and paragraph 4 is redesignated as paragraph 3.

vii. Under paragraph 41(d), paragraph 4 is added.

viii. Under paragraph 41(f), new paragraph 1 is added.

Supplement I to Part 1024—Official Bureau Interpretations

* * * * *

Subpart B—Mortgage Settlement and Escrow Accounts

* * * * *

Section 1024.17—Escrow Accounts

* * * * *

17(k)(5)(ii) Inability to disburse funds.

* * * * *

Subpart C—Mortgage Servicing

* * * * *

Section 1024.33—Mortgage Servicing Transfers

* * * * *

33(a) Servicing disclosure statement.

1. *Terminology*. Although the servicing disclosure statement must be clear and conspicuous pursuant to § 1024.32(a), § 1024.33(a) does not set forth any specific rules for the format of the statement, and the specific language of the servicing disclosure statement in appendix MS-1 is not required to be used. The model format may be supplemented with additional information that clarifies or enhances the model language.

* * * * *

33(c) Borrower payments during transfer of servicing.

33(c)(1) Payments not considered late.

1. * * *

2. *Compliance with § 1024.39.* A transferee servicer's compliance with § 1024.39 during the 60-day period beginning on the effective date of a servicing transfer does not constitute treating a payment as late for purposes of § 1024.33(c)(1).

Section 1024.35—Error Resolution Procedures

* * * * *

35(c) Contact information for borrowers to assert errors.

* * * * *

2. *Notice of an exclusive address.* A notice establishing an address that a borrower must use to assert an error may be included with a different disclosure, such as a notice of transfer. The notice is subject to the clear and conspicuous requirement in § 1024.32(a)(1). If a servicer establishes an address that a borrower must use to assert an error, a servicer must provide that address to the borrower in the following contexts:

i. The written notice designating the specific address, required pursuant to § 1024.35(c) and § 1024.36(b).

ii. Any periodic statement or coupon book required pursuant to 12 CFR 1026.41.

iii. Any website the servicer maintains in connection with the servicing of the loan.

iv. Any notice required pursuant to §§ 1024.39 or .41 that includes contact information for assistance.

* * * * *

Section 1024.36—Requests for Information

* * * * *

36(b) Contact information for borrowers to request information.

1. * * *

2. *Notice of an exclusive address.* A notice establishing an address that a borrower must use to request information may be included with a different disclosure, such as a notice of transfer. The notice is subject to the clear and conspicuous requirement in § 1024.32(a)(1). If a servicer establishes an address that a borrower must use to request information, a servicer must provide that address to the borrower in the following contexts:

i. The written notice designating the specific address, required pursuant to § 1024.35(c) and § 1024.36(b).

ii. Any periodic statement or coupon book required pursuant to 12 CFR 1026.41.

iii. Any website the servicer maintains in connection with the servicing of the loan.

iv. Any notice required pursuant to §§ 1024.39 or .41 that includes contact information for assistance.

* * * * *

Section 1024.38—General Servicing Policies, Procedures and Requirements

38(b) Objectives.

38(b)(5) Informing Borrowers of the Written Error Resolution and Information Request Procedures.

* * * * *

3. *Notices of error incorrectly sent to addresses associated with submission of loss mitigation applications or the continuity of contact*. A servicer's policies and procedures must be reasonably designed to ensure that if a borrower incorrectly submits an assertion of an error to any address given to the borrower in connection with submission of a loss mitigation application or the continuity of contact pursuant to § 1024.40, the servicer will inform the borrower of the procedures for submitting written notices of error set forth in § 1024.35, including the correct address. Alternatively, the servicer could redirect such notices to the correct address.

* * * * *

Section 1024.41—Loss Mitigation Procedures.

41(b) Receipt of loss mitigation application.

41(b)(1) Complete loss mitigation application.

* * * * *

4. *Diligence requirements*. Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation application, the servicer must act with reasonable diligence to collect information needed to complete the application. Further, a servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. Reasonable diligence includes, without limitation, the following actions:

i. A servicer requires additional information from the applicant, such as an address or a telephone number to verify employment; the servicer contacts the applicant promptly to obtain such information after receiving a loss mitigation application;

ii. Servicing for a mortgage loan is transferred to a servicer and the borrower makes an incomplete loss mitigation application to the transferee servicer after the transfer; the transferee servicer reviews documents provided by the transferor servicer to determine if information required to make the loss mitigation application complete is contained within documents transferred by the transferor servicer to the servicer; and

iii. A servicer offers a borrower a payment forbearance program based on an incomplete loss mitigation application; the servicer notifies the borrower that he or she is being offered a payment forbearance program based on an evaluation of an incomplete application, and that the borrower has the option of completing the application to receive a full evaluation of all loss mitigation options available to the borrower. If a servicer provides such a notification, the borrower remains in compliance with the payment forbearance program, and the borrower does not request further assistance, the servicer could suspend reasonable diligence efforts until near the end of the payment forbearance program. Near the end of the program, and prior to the end of the forbearance period, it may be necessary for the servicer to contact the borrower to determine if the borrower wishes to complete the application and proceed with a full loss mitigation evaluation.

* * * * *

41(b)(2)Review of loss mitigation application submission.

41(b)(2)(i) Requirements.

Paragraph 41(b)(2)(i)(B).

1. *Later discovery of additional information required to evaluate application.* Even if a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information or a corrected version of a previously submitted document is required, the servicer must promptly request the additional information or corrected document from the borrower pursuant to the reasonable diligence obligation in § 1024.41(b)(1). See § 1024.41(c)(2)(iv) addressing facially complete applications.

41(b)(2)(ii) Time period disclosure.

1. *Reasonable date.* Section 1024.41(b)(2)(ii) requires that a notice informing a borrower that a loss mitigation application is incomplete must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. In determining a reasonable date, a servicer should select the deadline that preserves the maximum borrower rights under § 1024.41 based on the milestones listed below, except when doing so would be impracticable to permit the borrower sufficient time to obtain and submit the type of documentation needed. Generally, it would be impracticable for a borrower to obtain and submit documents in less than seven days. In setting a date, the following milestones should be considered (if the date of a foreclosure sale is not known, a servicer may use a reasonable estimate of the date for which a foreclosure sale may be scheduled):

i. The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower;

ii. The date that is the 120th day of the borrower's delinquency;

iii. The date that is 90 days before a foreclosure sale;

iv. The date that is 38 days before a foreclosure sale.

41(b)(3) Determining Protections.

1. *Foreclosure sale not scheduled.* If no foreclosure sale has been scheduled as of the date that a complete loss mitigation application is received, the application is considered to have been received more than 90 days before any foreclosure sale.

2. *Foreclosure sale re-scheduled*. The protections under § 1024.41 that have been determined to apply to a borrower pursuant to § 1024.41(b)(3) remain in effect thereafter, even if a foreclosure sale is later scheduled or rescheduled.

41(c) Evaluation of loss mitigation applications.

* * * * *

41(c)(2) Incomplete loss mitigation application evaluation.

* * * * *

41(c)(2)(iii) Payment forbearance.

1. *Short-term payment forbearance program.* The exemption in § 1024.41(c)(2)(iii) applies to short-term payment forbearance programs. A payment forbearance program is a loss mitigation option for which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program allows the forbearance of payments due over periods of no more than six months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments.

2. *Payment forbearance and incomplete applications.* Section 1024.41(c)(2)(iii) allows a servicer to offer a borrower a short-term payment forbearance program based on an evaluation of an incomplete loss mitigation application. Such an incomplete loss mitigation application is still subject to the other obligations in § 1024.41, including the obligation in § 1024.41(b)(2) to review the application to determine if it is complete, the obligation in § 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application (see comment 41(b)(1)-4.iii), and the obligation to provide the borrower with the § 1024.41(b)(2)(i)(B) notice that the servicer acknowledges the receipt of the application and has determined the application is incomplete.

3. *Payment forbearance and complete applications.* Even if a servicer offers a borrower a payment forbearance program based on an evaluation of an incomplete loss mitigation application, the servicer must still comply with all the requirements in § 1024.41 if the borrower completes his or her loss mitigation application.

41(c)(2)(iv) Facially complete application.

1. *Reasonable opportunity.* Section 1024.41(c)(2)(iv) requires a servicer to treat a facially complete application as complete for the purposes of paragraphs (f)(2) and (g) until the borrower has been given a reasonable opportunity to complete the application. A reasonable opportunity requires the servicer to notify the borrower of what additional information or corrected documents are required, and to afford the borrower sufficient time to gather the information and documentation necessary to complete the application and submit it to the servicer. The amount of time that is sufficient for this purpose will depend on the facts and circumstances.

2. *Borrower fails to complete the application.* If the borrower fails to complete the application within the timeframe provided under § 1024.41(c)(2)(iv), the application shall be considered incomplete.

41(d) Denial of loan modification options.

* * * * *

4. *Reasons listed.* A servicer is required to disclose the actual reason or reasons for the denial. If a servicer's systems establish a hierarchy of eligibility criteria and reach the first criterion that causes a denial but do not evaluate the borrower based on additional criteria, a servicer complies with the rule by providing only the reason or reasons with respect to which the borrower was actually evaluated and rejected as well as notification that the borrower was not evaluated on other criteria. A servicer is not required to determine or disclose whether a borrower would have been denied on the basis of additional criteria if such criteria were not actually considered.

41(f) Prohibition on foreclosure referral.

1. *Prohibited activities.* Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances. Whether a document is considered the first notice or filing is determined on the basis of foreclosure procedure under the applicable State law.

i. Where foreclosure procedure requires a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (*e.g.*, a complaint, petition, order to docket, or notice of hearing).

ii. Where foreclosure procedure does not require an action or court proceeding, such as under a power of sale, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process.

iii. Where foreclosure procedure does not require any court filing or proceeding, and also does not require any document to be recorded or published, a document is considered the first notice or filing if it is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

iv. A document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the document must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

*   *   *   *   *

PART 1026 – TRUTH IN LENDING (REGULATION Z)

12. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

*   *   *   *   *

Subpart C—Closed-End Credit

13. Section 1026.23 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 1026.23 Right of rescission.

(a) * * *

(3) * * *

(ii) For purposes of this paragraph (a)(3), the term “material disclosures” means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §§ 1026.32(c) and (d) and 1026.43(g).

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

14. Section1026.31, as amended January 31, 2013, at 78 FR 6856 is amended by revising paragraphs (g), (h)(1)(iii)(A) and (h)(2)(iii)(A) to read as follows:

§ 1026.31 General rules.

* * * * *

(g) Accuracy of annual percentage rate. For purposes of section 1026.32, the annual percentage rate shall be considered accurate, and may be used in determining whether a transaction is covered by section 1026.32, if it is accurate according to the requirements and within the tolerances under section 1026.22 for closed-end credit transactions or 1026.6(a) for open-end credit plans. The finance charge tolerances for rescission under section 1026.23(g) or (h) shall not apply for this purpose.

* * * * *

(h) * * *

(1) * * *

(iii) * * *

(A) Make the loan or credit plan satisfy the requirements of 15 U.S.C. 1631-1651; or

* * * * *

(2) * * *

(iii) *** * ***

(A) Make the loan or credit plan satisfy the requirements of 15 U.S.C. 1631-1651; or

* * * * *

15. Section 1026.32 is amended by:

a. Revising paragraph (a)(2)(iii), as amended January 31, 2013, at 78 FR 6856;

b. Revising paragraph (b)(1)(ii), as amended June 2, 2013, at 78 FR 35430;

c. Revising paragraph (b)(1)(vi), as amended January 30, 2013, at 78 FR 6408;

d. Revising paragraph (b)(2)(ii), as amended June 12, 2013, at 78 FR 35430; and

e. Revising paragraphs (b)(2)(vi), (b)(6)(ii), and (d)(1)(ii)(C), as amended January 31, 2013, at 78 FR 6856.

The revisions read as follows:

§ 1026.32 Requirements for high-cost mortgages.

(a) *** * ***

(2) *** * ***

(iii) A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction; or

* * * * *

(b) *** * ***

(1) *** * ***

(ii) All compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set unless:

(A) That compensation is paid by a consumer to a mortgage broker, as defined in § 1026.36(a)(2), and already has been included in points and fees under paragraph (b)(1)(i) of this section;

(B) That compensation is paid by a mortgage broker, as defined in § 1026.36(a)(2), to a loan originator that is an employee of the mortgage broker;

(C) That compensation is paid by a creditor to a loan originator that is an employee of the creditor; or

(D) That compensation is paid by a retailer of manufactured homes to its employee.

*   *   *   *   *

(vi) The total prepayment penalty, as defined in paragraph (b)(6)(i) or (ii) of this section, as applicable, incurred by the consumer if the consumer refinances the existing mortgage loan, or terminates an existing open-end credit plan in connection with obtaining a new mortgage loan, with the current holder of the existing loan or plan, a servicer acting on behalf of the current holder, or an affiliate of either.

(2) *** * ***

(ii) All compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set unless:

(A) That compensation is paid by a consumer to a mortgage broker, as defined in § 1026.36(a)(2), and already has been included in points and fees under paragraph (b)(2)(i) of this section;

(B) That compensation is paid by a mortgage broker, as defined in § 1026.36(a)(2), to a loan originator that is an employee of the mortgage broker;

(C) That compensation is paid by a creditor to a loan originator that is an employee of the creditor; or

(D) That compensation is paid by a retailer of manufactured homes to its employee.

* * * * *

(vi) The total prepayment penalty, as defined in paragraph (b)(6)(i) or (ii) of this section, as applicable, incurred by the consumer if the consumer refinances an existing closed-end credit transaction with an open-end credit plan, or terminates an existing open-end credit plan in connection with obtaining a new open-end credit plan, with the current holder of the existing transaction or plan, a servicer acting on behalf of the current holder, or an affiliate of either;

* * * * *

(6) *** * ***

(ii) *Open-end credit.* For an open-end credit plan, *prepayment penalty* means a charge imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term, other than a waived, bona fide third-party charge that the creditor imposes if the consumer terminates the open-end credit plan sooner than 36 months after account opening.

* * * * *

(d) *Limitations.* A high-cost mortgage shall not include the following terms:

(1) * * *

(ii) * * *

(C) A loan that meets the criteria set forth in §§ 1026.43(f)(1)(i) through (vi) and 1026.43(f)(2), or the conditions set forth in § 1026.43(e)(6).

* * * * *

16. Section 1026.35 is amended by revising paragraphs (b)(2)(i)(D), (b)(2)(iii)(A), and

(b)(2)(iii)(D)(*1*) to read as follows:

§ 1026.35 Requirements for higher-priced mortgage loans.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) A reverse mortgage transaction subject to § 1026.33.

* * * * *

(iii) * * *

(A) During any of the three preceding calendar years, the creditor extended more than 50 percent of its total covered transactions, as defined by § 1026.43(b)(1), secured by a first lien, on properties that are located in counties that are either "rural" or "underserved," as set forth in paragraph (b)(2)(iv) of this section;

* * * * *

(D) * * *

(*1*) Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before January 1, 2014; or

* * * * *

17. Section 1026.36, as amended February 15, 2013, at 78 FR 11280, is amended by revising paragraphs (a)(1)(i)(A) and (B), adding paragraph (a)(6), and revising paragraphs (b), (f)(3)(i) introductory text, (f)(3)(ii), (i), and (j)(2) to read as follows:

§ 1026.36 Prohibited acts or practices and certain requirements for credit secured by a dwelling.

(a) * * *

(1) * * *

(i) * * *

(A) A person who does not take a consumer credit application or offer or negotiate credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics, but who performs purely administrative or clerical tasks on behalf of a person who does engage in such activities.

(B) An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms, or advise a consumer on credit terms.

* * * * *

(6) *Credit terms.* For purposes of this section, the term "credit terms" includes rates, fees, and other costs. Credit terms are selected based on the consumer's financial characteristics when those terms are selected based on any factors that may influence a credit decision, such as debts, income, assets, or credit history.

* * * * *

(b) *Scope*. Paragraphs (c)(1) and (c)(2) of this section apply to closed-end consumer credit transactions secured by a consumer's principal dwelling. Paragraph (c)(3) of this section applies to a consumer credit transaction secured by a dwelling. Paragraphs (d) through (i) of this section apply to closed-end consumer credit transactions secured by a dwelling. This section does not apply to a home equity line of credit subject to § 1026.40, except that paragraphs (h) and (i) of this section apply to such credit when secured by the consumer's principal dwelling and paragraph (c)(3) applies to such credit when secured by a dwelling. Paragraphs (d) through

(i) of this section do not apply to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

* * * * *

(f) * * *

(3) * * *

(i) Obtain for any individual whom the loan originator organization hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under § 1026.36(f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling:

* * * * *

(ii) Determine on the basis of the information obtained pursuant to paragraph (f)(3)(i) of this section and any other information reasonably available to the loan originator organization, for any individual whom the loan originator organization hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under this paragraph (f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling, that the individual loan originator:

*** * * * ***

(i) *Prohibition on financing credit insurance.* (1) A creditor may not finance, directly or indirectly, any premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling). This prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.

(2) For purposes of this paragraph (i):

(i) "Credit insurance":

(A) Means credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, but

(B) Excludes credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to a separate insurance contract and are not paid to an affiliate of the creditor;

(ii) A creditor finances premiums or fees for credit insurance if it provides a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer beyond the monthly period in which the premium or fee is due; and

(iii) Credit insurance premiums or fees are calculated on a monthly basis if they are determined mathematically by multiplying a rate by the actual monthly outstanding balance.

(j) * * *

(2) For purposes of this paragraph (j), "depository institution" has the meaning in section 1503(3) of the SAFE Act, 12 U.S.C. 5102(3). For purposes of this paragraph (j), "subsidiary" has the meaning in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

*** * * * ***

18. Section 1026.43, as added January 30, 2013, at 78 FR 6408, is amended by revising paragraphs (a)(2) and (e)(4)(ii) to read as follows:

§ 1026.43 Minimum standards for transactions secured by a dwelling.

(a) * * *

(2) A mortgage transaction secured by a consumer's interest in a timeshare plan, as defined in 11 U.S.C. 101(53(D); or

* * * * *

(e) * * *

(4) * * *

(ii) *Eligible loans.* A qualified mortgage under this paragraph (e)(4) must be one of the following at consummation:

* * * * *

(C) A loan that is eligible to be guaranteed by the U.S. Department of Veterans Affairs;

* * * * *

19. Appendix H to Part 1026, as amended February 14, 2013, at 78 FR 10901, is amended by:

a. Revising the entry for H-30(C) in the table of contents at the beginning of the appendix, and

b. Revising the heading of H-30(C).

The revision reads as follows:

Appendix H to Part 1026—Closed-end Model Forms and Clauses

*** * * * ***

H-30(C) Sample Form of Periodic Statement for a Payment-Option Loan

*   *   *   *   *

20. In Supplement I to Part 1026:

a. Under *Section 1026.25—Record Retention*

i. Under *Paragraph 25(c)(2) Records related to requirements for loan originator compensation*, as amended February 15, 2013, at 78 FR 11280, paragraph 1 is revised.

ii. Under *Paragraph 25(c)(3) Records related to minimum standards for transactions secured by a dwelling*, as added January 30, 2013, at 78 FR 6408, paragraph 1 is revised.

b. Under *Section 1026.32—Requirements for High-Cost Mortgages:*

i. Under *Paragraph 32(b)(1)*, as amended January 30, 2013, at 78 FR 6408, paragraph 2 is added.

ii. Under *Paragraph 32(b)(1)(ii)*, as amended June 12, 2013, at 78 FR 35430, paragraph 5 is added.

iii. *Paragraph 32(b)(2)* and paragraph 1 are added.

iv. Under *Paragraph 32(b)(2)(i)*, as amended January 30, 2013, at 78 FR 6408, paragraph 1 is revised.

v. Under *Paragraph 32(b)(2)(i)(D)*, as amended January 30, 2013, at 78 FR 6408, paragraph 1 is revised.

vi. Under *Paragraph 32(d)(8)(ii)*, as amended January 30, 2013, at 78 FR 6408, paragraph 1 is revised.

c. Under *Section 1026.34—Prohibited Acts or Practices in Connection with High-Cost Mortgages*, under *Paragraph 34(a)(5)(v)*, as amended January 30, 2013, at 78 FR 6408, paragraph 1 is revised.

d. Under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans*

i. Under *Paragraph 35(b)(2)(iii)*, paragraph 1 is revised.

ii. Under *Paragraph 35(b)(2)(iii)(D(1)*, paragraph 1 is revised.

e. Under *Section 1026.36—Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling*

i. Under *Paragraph 36(a)*, as amended February 15, 2013, at 78 FR 11280, paragraphs 1, 4, and 5 are revised.

ii. Paragraph *36(a)(1)(i)(B)* and paragraph 1 are added.

iii. Under *Paragraph 36(b)*, as amended February 15, 2013, at 78 FR 11280, paragraph 1 is revised.

iv. Under *Paragraph 36(d)(1)*, as amended February 15, 2013, at 78 FR 11280, paragraphs 1, 3, and 6 are revised.

v. Under *Paragraph 36(f)(3)(i)*, as amended February 15, 2013, at 78 FR 11280, paragraphs 1 and 2 are revised.

vi. Under *Paragraph 36(f)(3)(ii)*, as amended February 15, 2013, at 78 FR 11280, paragraphs 1 and 2 are revised.

f. Under *Section 1026.41—Periodic Statements for Residential Mortgage Loans*

i. Under *Paragraph 41(b)*, as amended February 14, 2013, at 78 FR 10901, paragraph 1 is revised.

ii. Under *Paragraph 41(d)*, as amended February 14, 2013, at 78 FR 10901, paragraph 3 is revised.

iii. Under *Paragraph 41(d)(4)*, as amended February 14, 2013, at 78 FR 10901, paragraph 1 is revised.

iv. Under *Paragraph 41(e)(3)*, as amended February 14, 2013, at 78 FR 10901, paragraph 1 is revised.

v. Under *Paragraph 41(e)(4)(iii)*, as amended February 14, 2013, at 78 FR 10901, paragraph 1 is revised.

g. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling*:

i. Under *Paragraph 43(b)(8)*, as added January 30, 2013, at 78 FR 6408, paragraph 4 is revised.

ii. Under *Paragraph 43(c)(3)*, as added January 30, 2013, at 78 FR 6408, paragraph 6 is revised.

iii. Under *Paragraph 43(e)(4)*, as added January 30, 2013, at 78 FR 6408, paragraph 1 is revised.

iv. Under *Paragraph 43(e)(5)*, as amended June 12, 2013, at 78 FR 35430, paragraph 8 is revised.

v. Under *Paragraph 43(f)(2)(iii)*, as added January 30, 2013, at 78 FR 6408, paragraph 1 is revised.

The revisions read as follows:

Supplement I to Part 1026 – Official Interpretations

* * * * *

Subpart D—Miscellaneous

Section 1026.25—Record Retention

* * * * *

25(c) Records related to certain requirements for mortgage loans.

25(c)(2) Records related to requirements for loan originator compensation.

1. * * *

i. *Records sufficient to evidence payment and receipt of compensation*. Records are sufficient to evidence payment and receipt of compensation if they demonstrate the following facts: the nature and amount of the compensation; that the compensation was paid, and by whom; that the compensation was received, and by whom; and when the payment and receipt of compensation occurred. The compensation agreements themselves are to be retained in all circumstances consistent with § 1026.25(c)(2)(i). The additional records that are sufficient necessarily will vary on a case-by-case basis depending on the facts and circumstances, particularly with regard to the nature of the compensation. For example, if the compensation is in the form of a salary, records to be retained might include copies of required filings under the Internal Revenue Code that demonstrate the amount of the salary. If the compensation is in the form of a contribution to or a benefit under a designated tax-advantaged plan, records to be maintained might include copies of required filings under the Internal Revenue Code or other applicable Federal law relating to the plan, copies of the plan and amendments thereto in which individual loan originators participate and the names of any loan originators covered by the plan, or determination letters from the Internal Revenue Service regarding the plan. If the compensation is in the nature of a commission or bonus, records to be retained might include a settlement agent "flow of funds" worksheet or other written record or a creditor closing instructions letter directing disbursement of fees at consummation. Where a loan originator is a mortgage broker, a disclosure of compensation or broker agreement required by applicable State law that recites the broker's total compensation for a transaction is a record of the amount actually paid to the loan originator in connection with the transaction, unless actual compensation deviates from the amount in the disclosure or agreement. Where compensation has been decreased to defray the cost, in whole or part, of an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA (or omitted from that disclosure), records to be maintained are those documenting the decrease in compensation and reasons for it.

ii. *Compensation agreement*. For purposes of § 1026.25(c)(2), a compensation agreement includes any agreement, whether oral, written, or based on a course of conduct that establishes a compensation arrangement between the parties (*e.g.*, a brokerage agreement between a creditor and a mortgage broker or provisions of employment contracts between a creditor and an individual loan originator employee addressing payment of compensation). Where a compensation agreement is oral or based on a course of conduct and cannot itself be maintained, the records to be maintained are those, if any, evidencing the existence or terms of the oral or course of conduct compensation agreement. Creditors and loan originators are free to specify what transactions are governed by a particular compensation agreement as they see fit. For example, they may provide, by the terms of the agreement, that the agreement governs compensation payable on transactions consummated on or after some future effective date (in which case, a prior agreement governs transactions consummated in the meantime). For purposes of applying the record retention requirement to transaction-specific commissions, the relevant compensation agreement for a given transaction is the agreement pursuant to which compensation for that transaction is determined.

* * * * *

25(c)(3) Records related to minimum standards for transactions secured by a dwelling.

1. *Evidence of compliance with repayment ability provisions*. A creditor must retain evidence of compliance with § 1026.43 for three years after the date of consummation of a

consumer credit transaction covered by that section. (See comment 25(c)(3)-2 for guidance on the retention of evidence of compliance with the requirement to offer a consumer a loan without a prepayment penalty under § 1026.43(g)(3).) If a creditor must verify and document information used in underwriting a transaction subject to § 1026.43, the creditor shall retain evidence sufficient to demonstrate compliance with the documentation requirements of the rule. Although a creditor need not retain actual paper copies of the documentation used in underwriting a transaction subject to § 1026.43, to comply with § 1026.25(c)(3), the creditor must be able to reproduce such records accurately. For example, if the creditor uses a consumer's Internal Revenue Service (IRS) Form W-2 to verify the consumer's income, the creditor must be able to reproduce the IRS Form W-2 itself, and not merely the income information that was contained in the form.

*** * * * ***

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.32—Requirements for High-Cost Mortgages

* * * * *

32(b) Definitions.

* * * * *

Paragraph 32(b)(1).

* * * * *

2. *Charges paid by parties other than the consumer*. Under § 1026.32(b)(1), points and fees may include charges paid by third parties in addition to charges paid by the consumer. Specifically, charges paid by third parties that fall within the definition of points and fees set

forth in § 1026.32(b)(1)(i) through (vi) are included in points and fees. In calculating points and fees in connection with a transaction, creditors may rely on written statements from the consumer or third party paying for a charge, including the seller, to determine the source and purpose of any third-party payment for a charge.

i. *Examples—included in points and fees*. A creditor's origination charge paid by a consumer's employer on the consumer's behalf that is included in the finance charge as defined in § 1026.4(a) or (b), must be included in points and fees under § 1026.32(b)(1)(i), unless other exclusions under § 1026.4 or § 1026.32(b)(1)(i)(A) through (F) apply. In addition, consistent with comment 32(b)(1)(i)-1, a third-party payment of an item excluded from the finance charge under a provision of § 1026.4, while not included in the total points and fees under § 1026.32(b)(1)(i), may be included under § 1026.32(b)(1)(ii) through (vi). For example, a payment by a third party of a creditor-imposed fee for an appraisal performed by an employee of the creditor is included in points and fees under § 1026.32(b)(1)(iii). *See* comment 32(b)(1)(i)-1.

ii. *Examples—not included in points and fees.* A charge paid by a third party is not included in points and fees under § 1026.32(b)(1)(i) if the exclusions to points and fees in § 1026.32(b)(1)(i)(A) through (F) apply. For example, certain bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either are excluded from points and fees under § 1026.32(b)(1)(i)(D), regardless of whether those charges are paid by a third party or the consumer.

iii. *Seller's points*. Seller's points, as described in § 1026.4(c)(5) and commentary, are excluded from the finance charge and thus are not included in points and fees under § 1026.32(b)(1)(i). However, charges paid by the seller for items listed in § 1026.32(b)(1)(ii) through (vi) are included in points and fees.

iv. *Creditor-paid charges*. Charges that are paid by the creditor, other than loan originator compensation paid by the creditor that is required to be included in points and fees under § 1026.32(b)(1)(ii), are excluded from points and fees. *See* §§ 1026.32(b)(1)(i)(A), 1026.4(a), and comment 4(a)-(2).

* * * * *

Paragraph 32(b)(1)(ii).

* * * * *

4. *Loan originator compensation—examples.* The following examples illustrate the rule:

* * * * *

iii. Assume that, according to a creditor's compensation policies, the creditor awards its loan officers a bonus at the end of the year based on the number of consummated transactions originated by the loan officer during that year. Assume also that, for the first 10 transactions originated by the loan officer in a given year, no bonus is awarded; for the next 10 transactions originated by the loan officer up to 20, a bonus of $100 per transaction is awarded; and for each transaction originated after the first 20, a bonus of $200 per transaction is awarded. In this case, if, on the date the interest rate for the transaction is set, the loan officer has originated 10 or fewer transactions that year, then none of the year-end bonus is attributable to the transaction and therefore none of the bonus is included in points and fees for that transaction. If, on the date the interest rate for the transaction is set, the loan officer has originated more than 10 but no more than 20 transactions, $100 of the bonus is attributable to the transaction and is included in points and fees for that transaction. If, on the date the interest rate for the transaction is set, the loan officer has originated more than 20 transactions, $200 of the bonus is attributable to the transaction and is included in points and fees for the transaction.

*   *   *   *   *

5. *Loan originator compensation—calculating loan originator compensation in manufactured home transactions*. i. If a manufactured home retailer qualifies as a loan originator under § 1026.36(a)(1), then compensation that is paid by a consumer or creditor to the retailer for loan origination activities and that can be attributed to the transaction at the time the interest rate is set must be included in points and fees. For example, assume a manufactured home retailer takes a residential mortgage loan application and is entitled to receive at consummation a $1,000 commission from the creditor for taking the mortgage loan application. The $1,000 commission is loan originator compensation that must be included in points and fees.

ii. If the creditor has knowledge that the sales price of a manufactured home includes loan originator compensation, then such compensation can be attributed to the transaction at the time the interest rate is set and therefore is included in points and fees under § 1026.32(b)(1)(ii). However, the creditor is not required to investigate the sales price of a manufactured home to determine if the sales price includes loan originator compensation.

iii. As provided in § 1026.32(b)(1)(ii)(D), compensation paid by a manufactured home retailer to its employees is not included in points and fees under § 1026.32(b)(1)(ii).

*   *   *   *   *

Paragraph 32(b)(2).

1. See comment 32(b)(1)-2 for guidance concerning the inclusion in points and fees of charges paid by parties other than the consumer.

*   *   *   *   *

Paragraph 32(b)(2)(i).

1. *Finance charge*. The points and fees calculation under § 1026.32(b)(2) generally does not include items that are included in the finance charge but that are not known until after account opening, such as minimum monthly finance charges or charges based on account activity or inactivity. Transaction fees also generally are not included in the points and fees calculation, except as provided in § 1026.32(b)(2)(vi). See comments 32(b)(1)-1 and 32(b)(1)(i)-1 for additional guidance concerning the calculation of points and fees.

* * * * *

Paragraph 32(b)(2)(i)(D).

1. For purposes of § 1026.32(b)(2)(i)(D), the term *loan originator* means a loan originator as that term is defined in § 1026.36(a)(1), without regard to § 1026.36(a)(2). See comments 32(b)(1)(i)(D)-1 through -4 for further guidance concerning the exclusion of bona fide third-party charges from points and fees.

* * * * *

Paragraph 32(d)(8)(ii).

1. *Failure to meet repayment terms.* A creditor may terminate a loan or open-end credit agreement and accelerate the balance when the consumer fails to meet the repayment terms resulting in a default in payment under the agreement; a creditor may do so, however, only if the consumer actually fails to make payments resulting in a default in the agreement. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under § 1026.32(d)(8)(ii) if the consumer fails to meet the repayment terms resulting in a default of the agreement. Section 1026.32(d)(8)(ii) does not override any State or other law that requires a creditor to notify a

consumer of a right to cure, or otherwise places a duty on the creditor before it can terminate a loan or open-end credit agreement and accelerate the balance.

* * * * * *

Section 1026.34—Prohibited Acts or Practices in Connection with High-Cost Mortgages

* * * * *

34(a)(5) Pre-loan counseling.

* * * * *

Paragraph 34(a)(5)(v) Counseling fees.

1. *Financing.* Section 1026.34(a)(5)(v) does not prohibit a creditor from financing the counseling fee as part of the transaction for a high-cost mortgage, if the fee is a bona fide third-party charge as provided by § 1026.32(b)(1)(i)(D) and (b)(2)(i)(D).

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

35(b) Escrow accounts.

* * * * *

35(b)(2) Exemptions.

* * * * *

Paragraph 35(b)(2)(iii).

1. *Requirements for exemption.* Under § 1026.35(b)(2)(iii), except as provided in § 1026.35(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following four conditions are satisfied when the higher-priced mortgage loan is consummated:

i. During any of the three preceding calendar years, more than 50 percent of the creditor's total first-lien covered transactions, as defined in § 1026.43(b)(1), are secured by properties located in counties that are either ‘‘rural’’ or ‘‘underserved,’’ as set forth in § 1026.35(b)(2)(iv). Pursuant to that section, a creditor may rely as a safe harbor on a list of counties published by the Bureau to determine whether counties in the United States are rural or underserved for a particular calendar year. Thus, for example, if a creditor originated 90 covered transactions, as defined by § 1026.43(b)(1), secured by a first lien, during 2011, 2012, or 2013, the creditor meets this condition for an exemption in 2014 if at least 46 of those transactions in one of those three calendar years are secured by first liens on properties that are located in such counties.

* * * * *

Paragraph 35(b)(2)(iii)(D)(1).

1. *Exception for certain accounts.* Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before January 1, 2014, are not counted for purposes of § 1026.35(b)(2)(iii)(D). For applications received on and after January 1, 2014, creditors, together with their affiliates, that establish new escrow accounts, other than those described in § 1026.35(b)(2)(iii)(D)(*2*), do not qualify for the exemption provided under § 1026.35(b)(2)(iii). Creditors, together with their affiliates, that continue to maintain escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before January 1, 2014, still qualify for the exemption provided under § 1026.35(b)(2)(iii) so long as they do not establish new escrow accounts for transactions for which they received applications on or after January 1, 2014, other than those described in § 1026.35(b)(2)(iii)(D)(*2*), and they otherwise qualify under § 1026.35(b)(2)(iii).

*   *   *   *   *

Section 1026.36–Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling

36(a) Definitions.

1. *Meaning of loan originator.* i. *General.* A. Section 1026.36(a) defines the set of activities or services any one of which, if done for or in the expectation of compensation or gain, makes the person doing such activities or performing such services a loan originator, unless otherwise excluded. The scope of activities covered by the term loan originator includes:

1. Referring a consumer to any person who participates in the origination process as a loan originator. Referring is an activity included under each of the activities of offering, arranging, or assisting a consumer in obtaining or applying to obtain an extension of credit. Referring includes any oral or written action directed to a consumer that can affirmatively influence the consumer to select a particular loan originator or creditor to obtain an extension of credit when the consumer will pay for such credit. See comment 36(a)-4 with respect to certain activities that do not constitute referring.

2. Arranging a credit transaction, including initially contacting and orienting the consumer to a particular loan originator's or creditor's origination process or particular credit terms that are or may be available to that consumer selected based on the consumer's financial characteristics, assisting the consumer to apply for credit, taking an application, offering particular credit terms to the consumer selected based on the consumer's financial characteristics, negotiating credit terms, or otherwise obtaining or making an extension of credit.

3. Assisting a consumer in obtaining or applying for consumer credit by advising on particular credit terms that are or may be available to that consumer based on the consumer's financial characteristics, filling out an application form, preparing application packages (such as a credit application or pre-approval application or supporting documentation), or collecting application and supporting information on behalf of the consumer to submit to a loan originator or creditor. A person who, acting on behalf of a loan originator or creditor, collects information or verifies information provided by the consumer, such as by asking the consumer for documentation to support the information the consumer provided or for the consumer's authorization to obtain supporting documents from third parties, is not collecting information on behalf of the consumer. See also comment 36(a)-4.i through iv with respect to application-related administrative and clerical tasks and comment 36(a)-1.v with respect to third-party advisors.

4. Presenting particular credit terms for the consumer's consideration that are selected based on the consumer's financial characteristics, or communicating with a consumer for the purpose of reaching a mutual understanding about prospective credit terms.

*   *   *   *   *

4. * * *

i. *Application-related administrative and clerical tasks.* The definition of loan originator does not include a loan originator's or creditor's employee who provides a credit application form from the entity for which the person works to the consumer for the consumer to complete or, without assisting the consumer in completing the credit application, processing or analyzing the information, or discussing particular credit terms that are or may be available from a creditor or loan originator to that consumer selected based on the consumer's financial characteristics, delivers the credit application from a consumer to a loan originator or creditor. A person does not assist the consumer in completing the application if the person explains to the consumer filling out the application the contents of the application or where particular consumer information is to be provided, or generally describes the credit application process to a consumer without discussing particular credit terms that are or may be available from a creditor or loan originator to that consumer selected based on the consumer's financial characteristics.

ii. *Responding to consumer inquiries and providing general information*. The definition of loan originator does not include persons who:

A. * * *

B. As employees of a creditor or loan originator, provide loan originator or creditor contact information of the loan originator or creditor entity for which he or she works, or of a person who works for that the same entity to a consumer, provided that the person does not discuss particular credit terms that are or may be available from a creditor or loan originator to that consumer selected based on the consumer's financial characteristics and does not direct the consumer, based on his or her assessment of the consumer's financial characteristics, to a particular loan originator or particular creditor seeking to originate credit transactions to consumers with those financial characteristics;

C. Describe other product-related services (for example, persons who describe optional monthly payment methods via telephone or via automatic account withdrawals, the availability and features of online account access, the availability of 24-hour customer support, or free mobile applications to access account information); or

D. * * *

iii. *Loan processing.* The definition of loan originator does not include persons who, acting on behalf of a loan originator or a creditor:

A. * * *

B. * * *

C. Coordinate consummation of the credit transaction or other aspects of the credit transaction process, including by communicating with a consumer about process deadlines and documents needed at consummation, provided that any communication that includes a discussion about credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics only confirms credit terms already agreed to by the consumer;

*   *   *   *   *

iv. *Underwriting, credit approval, and credit pricing.* The definition of loan originator does not include persons who:

A. * * *

B. Approve particular credit terms or set particular credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics in offer or counter-offer situations, provided that only a loan originator communicates to or with the consumer regarding these credit terms, an offer, or provides or engages in negotiation, a counter-offer, or approval conditions; or

*   *   *   *   *

5. *Compensation.*

*   *   *   *   *

iv. *Amounts for charges for services that are not loan origination activities*.

A. * * *

B. Compensation includes any salaries, commissions, and any financial or similar incentive to an individual loan originator, regardless of whether it is labeled as payment for services that are not loan origination activities.

*   *   *   *   *

36(a)(1)(i)(B) Employee of a retailer of manufactured homes.

1. The definition of loan originator does not include an employee of a manufactured home retailer that "assists" a consumer in obtaining or applying for consumer credit as defined in comment 36(a)-1.i.A.*3*, provided the employee does not advise the consumer on specific credit terms, or otherwise engage in loan originator activity as defined in § 1026.36(a)(1). The following examples describe activities that, in the absence of other activities, do not define a manufactured home retailer employee as a loan originator:

i. Generally describing the credit application process to a consumer without advising on credit terms available from a creditor.

ii. Preparing residential mortgage loan packages, which means compiling and processing loan application materials and supporting documentation, and providing general application instructions to consumers so consumers can complete an application, without interacting or communicating with the consumer regarding transaction terms, but not filling out a consumer's application, inputting the information into an online application or other automated system, or taking information from the consumer over the phone to complete the application.

iii. Collecting information on behalf of the consumer with regard to a residential mortgage loan. Collecting information "on behalf of the consumer" would include gathering information or supporting documentation from third parties on behalf of the consumer to provide to the consumer, for the consumer then to provide in the application or for the consumer to submit to the loan originator or creditor.

iv. Providing or making available general information about creditors or loan originators that may offer financing for manufactured homes in the consumer's general area, when doing so does not otherwise amount to "referring" as defined in comment 36(a)-1.i.A.*1*. This includes making available, in a neutral manner, general brochures or information about the different creditors or loan originators that may offer financing to a consumer, but does not include recommending a particular creditor or loan originator or otherwise influencing the consumer's decision.

* * * * *

36(b) Scope.

1. *Scope of coverage.* Section 1026.36(c)(1) and (c)(2) applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. Section 1026.36(c)(3) applies to a consumer credit transaction, including home equity lines of credit under § 1026.40, secured by a consumer's dwelling. Paragraphs (h) and (i) of § 1026.36 apply to home equity lines of credit under § 1026.40 secured by a consumer's principal dwelling. Paragraphs (d), (e), (f), (g), (h), and (i) of § 1026.36 apply to closed-end consumer credit transactions secured by a dwelling. Closed-end consumer credit transactions include transactions secured by first or subordinate liens, and reverse mortgages that are not home equity lines of credit under § 1026.40. See § 1026.36(b) for additional restrictions on the scope of § 1026.36, and §§ 1026.1(c) and 1026.3(a) and corresponding commentary for further discussion of extensions of credit subject to Regulation Z.

* * * * *

36(d) Prohibited payments to loan originators.

* * * * *

36(d)(1) Payments based on a term of a transaction.

1\. * * *

ii. *Single or multiple transactions.* The prohibition on payment and receipt of compensation under § 1026.36(d)(1)(i) encompasses compensation that directly or indirectly is based on the terms of a single transaction of a single individual loan originator, the terms of multiple transactions by that single individual loan originator, or the terms of multiple transactions by multiple individual loan originators. Compensation to an individual loan originator that is based upon profits determined with reference to a mortgage-related business is considered compensation that is based on the terms of multiple transactions by multiple individual loan originators. For clarification about the exceptions permitting compensation based upon profits determined with reference to mortgage-related business pursuant to either a designated tax-advantaged plan or a non-deferred profits-based compensation plan, see comment 36(d)(1)-3. For clarification about "mortgage-related business," see comments 36(d)(1)-3.v.B and -3.v.E.

A. Assume that a creditor pays a bonus to an individual loan originator out of a bonus pool established with reference to the creditor's profits and the profits are determined with reference to the creditor's revenue from origination of closed-end consumer credit transactions secured by a dwelling. In such instance, the bonus is considered compensation that is based on the terms of multiple transactions by multiple individual loan originators. Therefore, the bonus is prohibited under § 1026.36(d)(1)(i), unless it is otherwise permitted under § 1026.36(d)(1)(iv).

B. Assume that an individual loan originator's employment contract with a creditor guarantees a quarterly bonus in a specified amount conditioned upon the individual loan originator meeting certain performance benchmarks (*e.g.*, volume of originations monthly). A bonus paid following the satisfaction of those contractual conditions is not directly or indirectly based on the terms of a transaction by an individual loan originator, the terms of multiple transactions by that individual loan originator, or the terms of multiple transactions by multiple individual loan originators under § 1026.36(d)(1)(i) as clarified by this comment 36(d)(1)-1.ii, because the creditor is obligated to pay the bonus, in the specified amount, regardless of the terms of transactions of the individual loan originator or multiple individual loan originators and the effect of those terms of multiple transactions on the creditor's profits. Because this type of bonus is not directly or indirectly based on the terms of multiple transactions by multiple individual loan originators, as described in § 1026.36(d)(1)(i) (as clarified by this comment 36(d)(1)-1.ii), it is not subject to the 10-percent total compensation limit described in § 1026.36(d)(1)(iv)(B)(*1*).

iii. * * *

* * * * *

D. The fees and charges described above in paragraphs B and C can only be a term of a transaction if the fees or charges are required to be disclosed in the Good Faith Estimate, the HUD-1, or the HUD-1A (and subsequently in any integrated disclosures promulgated by the Bureau under TILA section 105(b) (15 U.S.C. 1604(b)) and RESPA section 4 (12 U.S.C. 2603) as amended by sections 1098 and 1100A of the Dodd-Frank Act).

*** * * * ***

3. *Interpretation of § 1026.36(d)(1)(iii) and (iv).* Subject to certain restrictions, § 1026.36(d)(1)(iii) and § 1026.36(d)(1)(iv) permit contributions to or benefits under designated tax-advantaged plans and compensation under a non-deferred profits-based compensation plan even if the contributions, benefits, or compensation, respectively, are based on the terms of multiple transactions by multiple individual loan originators.

i. *Designated tax-advantaged plans*. Section 1026.36(d)(1)(iii) permits an individual loan originator to receive, and a person to pay, compensation in the form of contributions to a defined contribution plan or benefits under a defined benefit plan provided the plan is a designated tax-advantaged plan (as defined in § 1026.36(d)(1)(iii)), even if contributions to or benefits under such plans are directly or indirectly based on the terms of multiple transactions by multiple individual loan originators. In the case of a designated tax-advantaged plan that is a defined contribution plan, § 1026.36(d)(1)(iii) does not permit the contribution to be directly or indirectly based on the terms of that individual loan originator's transactions. A defined contribution plan has the meaning set forth in Internal Revenue Code section 414(i), 26 U.S.C. 414(i). A defined benefit plan has the meaning set forth in Internal Revenue Code section 414(j), 26 U.S.C. 414(j).

ii. *Non-deferred profits-based compensation plans*. As used in § 1026.36(d)(1)(iv), a "non-deferred profits-based compensation plan" is any compensation arrangement where an individual loan originator may be paid variable, additional compensation based in whole or in part on the mortgage-related business profits of the person paying the compensation, any affiliate, or a business unit within the organizational structure of the person or the affiliate, as applicable (*i.e.*, depending on the level within the person's or affiliate's organization at which the non-deferred profits-based compensation plan is established). A non-deferred profits-based compensation plan does not include a designated tax-advantaged plan or other forms of deferred compensation that are not designated tax-advantaged plans, such as those created pursuant to Internal Revenue Code section 409A, 26 U.S.C. 409A. Thus, if contributions to or benefits under a designated tax-advantaged plan or compensation under another form of deferred compensation plan are determined with reference to the mortgage-related business profits of the person making the contribution, then the contribution, benefits, or other compensation, as applicable, are not permitted by § 1026.36(d)(1)(iv) (although, in the case of contributions to or benefits under a designated tax-advantaged plan, the benefits or contributions may be permitted by § 1026.36(d)(1)(iii)). Under a non-deferred profits-based compensation plan, the individual loan originator may, for example, be paid directly in cash, stock, or other non-deferred compensation, and the compensation under the non-deferred profits-based compensation plan may be determined by a fixed formula or may be at the discretion of the person (*e.g.*, the person may elect not to pay compensation under a non-deferred profits-based compensation plan in a given year), provided the compensation is not directly or indirectly based on the terms of the individual loan originator's transactions. As used in § 1026.36(d)(1)(iv) and this commentary, non-deferred profits-based compensation plans include, without limitation, bonus pools, profits pools, bonus plans, and profit-sharing plans. Compensation under a non-deferred profits-based compensation plan could include, without limitation, annual or periodic bonuses, or awards of merchandise, services, trips, or similar prizes or incentives where the bonuses, contributions, or awards are determined with reference to the profits of the person, business unit, or affiliate, as applicable. As used in § 1026.36(d)(1)(iv) and this commentary, a business unit is a division, department, or segment within the overall organizational structure of the person or the person's affiliate that performs discrete business functions and that the person or the affiliate treats separately for accounting or other organizational purposes. For example, a creditor that pays its individual loan originators bonuses at the end of a calendar year based on the creditor's average net return on assets for the calendar year is operating a non-deferred profits-based compensation plan under § 1026.36(d)(1)(iv). A bonus that is paid to an individual loan originator from a source other than a non-deferred profits-based compensation plan (or a deferred compensation plan where the bonus is determined with reference to mortgage-related business profits), such as a retention bonus budgeted for in advance or a performance bonus paid out of a bonus pool set aside at the beginning of the company's annual accounting period as part of the company's operating budget, does not violate the prohibition on payment of compensation based on the terms of multiple transactions by multiple individual loan originators under § 1026.36(d)(1)(i), as clarified by comment 36(d)(1)-1.ii; therefore, § 1026.36(d)(1)(iv) does not apply to such bonuses.

iii. *Compensation that is not directly or indirectly based on the terms of multiple transactions by multiple individual loan originators*. The compensation arrangements addressed in § 1026.36(d)(1)(iii) and (iv) are permitted even if they are directly or indirectly based on the terms of multiple transactions by multiple individual loan originators. See comment 36(d)(1)-1 for additional interpretation. If a loan originator organization's revenues are exclusively derived from transactions subject to § 1026.36(d) (whether paid by creditors, consumers, or both) and that loan originator organization pays its individual loan originators a bonus under a non-deferred profits-based compensation plan, the bonus is not directly or indirectly based on the terms of multiple transactions by multiple individual loan originators if § 1026.36(d)(1)(i) is otherwise complied with.

iv. *Compensation based on terms of an individual loan originator's transactions*. Under both § 1026.36(d)(1)(iii), with regard to contributions made to a defined contribution plan that is a designated tax-advantaged plan, and § 1026.36(d)(1)(iv)(A), with regard to compensation under a non-deferred profits-based compensation plan, the payment of compensation to an individual loan originator may not be directly or indirectly based on the terms of that individual loan originator's transaction or transactions. Consequently, for example, where an individual loan originator makes loans that vary in their interest rate spread, the compensation payment may not take into account the average interest rate spread on the individual loan originator's transactions during the relevant calendar year.

v. *Compensation under non-deferred profits-based compensation plans*. Assuming that the conditions in § 1026.36(d)(1)(iv)(A) are met, § 1026.36(d)(1)(iv)(B)(*1*) permits certain compensation to an individual loan originator under a non-deferred profits-based compensation plan. Specifically, if the compensation is determined with reference to the profits of the person from mortgage-related business, compensation under a non-deferred profits-based compensation plan is permitted provided the compensation does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which compensation under the non-deferred profits-based compensation plan is paid. The compensation restrictions under § 1026.36(d)(1)(iv)(B)(*1*) are sometimes referred to in this commentary as the "10-percent total compensation limit" or the "10-percent limit."

A. *Total compensation*. For purposes of § 1026.36(d)(1)(iv)(B)(*1*), the individual loan originator's total compensation consists of the sum total of: (1) all wages and tips reportable for Medicare tax purposes in box 5 on IRS form W-2 (or, if the individual loan originator is an independent contractor, reportable compensation on IRS form 1099-MISC) that are actually paid during the relevant time period (regardless of when the wages and tips are earned), except for any compensation under a non-deferred profits-based compensation plan that is earned during a different time period (see comment 36(d)(1)-3.v.C); (2) at the election of the person paying the compensation, all contributions that are actually made during the relevant time period by the creditor or loan originator organization to the individual loan originator's accounts in designated tax-advantaged plans that are defined contribution plans (regardless of when the contributions are earned); and (3) at the election of the person paying the compensation, all compensation under a non-deferred profits-based compensation plan that is earned during the relevant time period, regardless of whether the compensation is actually paid during that time period (see comment 36(d)(1)-3.v.C). If an individual loan originator has some compensation that is reportable on the W-2 and some that is reportable on the 1099-MISC, the total compensation is the sum total of what is reportable on each of the two forms.

B. *Profits of the Person.* Under § 1026.36(d)(1)(iv), a plan is a non-deferred profits-based compensation plan if compensation is paid, based in whole or in part, on the profits of the person paying the compensation. As used in § 1026.36(d)(1)(iv), “profits of the person” include, as applicable depending on where the non-deferred profits-based compensation plan is set, the profits of the person, the business unit to which the individual loan originators are assigned for accounting or other organizational purposes, or any affiliate of the person. Profits from mortgage-related business are profits determined with reference to revenue generated from transactions subject to § 1026.36(d). Pursuant to § 1026.36(b) and comment 36(b)-1, § 1026.36(d) applies to closed-end consumer credit transactions secured by dwellings. This revenue includes, without limitation, and as applicable based on the particular sources of revenue of the person, business unit, or affiliate, origination fees and interest associated with dwelling-secured transactions for which individual loan originators working for the person were loan originators, income from servicing of such transactions, and proceeds of secondary market sales of such transactions. If the amount of the individual loan originator’s compensation under non-deferred profits-based compensation plans paid for a time period does not, in the aggregate, exceed 10 percent of the individual loan originator’s total compensation corresponding to the same time period, compensation under non-deferred profits-based compensation plans may be paid under § 1026.36(d)(1)(iv)(B)(*1*) regardless of whether or not it was determined with reference to the profits of the person from mortgage-related business.

C. *Time period for which the compensation under the non-deferred profits-based compensation plan is paid and to which the total compensation corresponds*. Under § 1026.36(d)(1)(iv)(B)(*1*), determination of whether payment of compensation under a non-deferred profits-based compensation plan complies with the 10-percent limit requires a calculation of the ratio of the compensation under the non-deferred profits-based compensation plan (*i.e.*, the compensation subject to the 10-percent limit) and the total compensation corresponding to the relevant time period. For compensation subject to the 10-percent limit, the relevant time period is the time period for which a person makes reference to profits in determining the compensation (*i.e.*, when the compensation was earned). It does not matter whether the compensation is actually paid during that particular time period. For total compensation, the relevant time period is the same time period, but only certain types of compensation may be included in the total compensation amount for that time period (see comment 36(d)(1)-3.v.A). For example, assume that during calendar year 2014 a creditor pays an individual loan originator compensation in the following amounts: $80,000 in commissions based on the individual loan originator's performance and volume of loans generated during the calendar year; and $10,000 in an employer contribution to a designated tax-advantaged defined contribution plan on behalf of the individual loan originator. The creditor desires to pay the individual loan originator a year-end bonus of $10,000 under a non-deferred profits-based compensation plan. The commissions are paid and employer contributions to the designated tax-advantaged defined contribution plan are made during calendar year 2014, but the year-end bonus will be paid in January 2015. For purposes of the 10-percent limit, the year-end bonus is counted toward the 10-percent limit for calendar year 2014, even though it is not actually paid until 2015. Therefore, for calendar year 2014 the individual loan originator's compensation that is subject to the 10-percent limit would be $10,000 (*i.e.*, the year-end bonus) and the total compensation would be $100,000 (*i.e.*, the sum of the commissions, the designated tax-advantaged plan contribution (assuming the creditor elects to include it in total compensation for calendar year 2014), and the bonus (assuming the creditor elects to include it in total compensation for calendar year 2014)); the bonus would be permissible under § 1026.36(d)(1)(iv) because it does not exceed 10 percent of total compensation. The determination of total compensation corresponding to 2014 also would not take into account any compensation subject to the 10-percent limit that is actually paid in 2014 but is earned during a different calendar year (*e.g.*, an annual bonus determined with reference to mortgage-related business profits for calendar year 2013 that is paid in January 2014). If the employer contribution to the designated tax-advantaged plan is earned in 2014 but actually made in 2015, however, it may not be included in total compensation for 2014. A company, business unit, or affiliate, as applicable, may pay compensation subject to the 10-percent limit during different time periods falling within its annual accounting period for keeping records and reporting income and expenses, which may be a calendar year or a fiscal year depending on the annual accounting period. In such instances, however, the 10-percent limit applies both as to each time period and cumulatively as to the annual accounting period. For example, assume that a creditor uses a calendar-year accounting period. If the creditor pays an individual loan originator a bonus at the end of each quarter under a non-deferred profits-based compensation plan, the payment of each quarterly bonus is subject to the 10-percent limit measured with respect to each quarter. The creditor can also pay an annual bonus under the non-deferred profits-based compensation plan that does not exceed the difference of 10 percent of the individual loan originator's total compensation corresponding to the calendar year and the aggregate amount of the quarterly bonuses.

D. *Awards of merchandise, services, trips, or similar prizes or incentives.* If any compensation paid to an individual loan originator under § 1026.36(d)(1)(iv) consists of an award of merchandise, services, trips, or similar prize or incentive, the cash value of the award is factored into the calculation of the 10-percent total compensation limit. For example, during a given calendar year, individual loan originator A and individual loan originator B are each employed by a creditor and paid $40,000 in salary, and $45,000 in commissions. The creditor also contributes $5,000 to a designated tax-advantaged defined contribution plan for each individual loan originator during that calendar year, which the creditor elects to include in the total compensation amount. Neither individual loan originator is paid any other form of compensation by the creditor. In December of the calendar year, the creditor rewards both individual loan originators for their performance during the calendar year out of a bonus pool established with reference to the profits of the mortgage origination business unit. Individual loan originator A is paid a $10,000 cash bonus, meaning that individual loan originator A's total compensation is $100,000 (assuming the creditor elects to include the bonus in the total compensation amount). Individual loan originator B is paid a $7,500 cash bonus and awarded a vacation package with a cash value of $3,000, meaning that individual loan originator B's total compensation is $100,500 (assuming the creditor elects to include the reward in the total compensation amount). Under § 1026.36(d)(1)(iv)(B)(*1*), individual loan originator A's $10,000 bonus is permissible because the bonus would not constitute more than 10 percent of individual loan originator A's total compensation for the calendar year. The creditor may not pay individual loan originator B the $7,500 bonus and award the vacation package, however, because the total value of the bonus and the vacation package would be $10,500, which is greater than 10 percent (10.45 percent) of individual loan originator B's total compensation for the calendar year. One way to comply with § 1026.36(d)(1)(iv)(B)(*1*) would be if the amount of the bonus were reduced to $7,000 or less or the vacation package were structured such that its cash value would be $2,500 or less.

E. *Compensation determined only with reference to non-mortgage-related business profits.* Compensation under a non-deferred profits-based compensation plan is not subject to the 10-percent total compensation limit under § 1026.36(d)(1)(iv)(B)(*1*) if the non-deferred profits-based compensation plan is determined with reference only to profits from business other than mortgage-related business, as determined in accordance with reasonable accounting principles. Reasonable accounting principles reflect an accurate allocation of revenues, expenses, profits, and losses among the person, any affiliate of the person, and any business units within the person or affiliates, and are consistent with the accounting principles applied by the person, the affiliate, or the business unit with respect to, as applicable, its internal budgeting and auditing functions and external reporting requirements. Examples of external reporting and filing requirements that may be applicable to creditors and loan originator organizations are Federal income tax filings, Federal securities law filings, or quarterly reporting of income, expenses, loan origination activity, and other information required by government-sponsored enterprises. As used in § 1026.36(d)(1)(iv)(B)(*1*), profits means positive profits or losses avoided or mitigated.

F. *Additional examples. 1*. Assume that, during a given calendar year, a loan originator organization pays an individual loan originator employee $40,000 in salary and $125,000 in commissions, and makes a contribution of $15,000 to the individual loan originator's 401(k) plan. At the end of the year, the loan originator organization wishes to pay the individual loan originator a bonus based on a formula involving a number of performance metrics, to be paid out of a profit pool established at the level of the company but that is determined in part with reference to the profits of the company's mortgage origination unit. Assume that the loan originator organization derives revenues from sources other than transactions covered by §1026.36(d). In this example, the performance bonus would be directly or indirectly based on the terms of multiple individual loan originators' transactions as described in § 1026.36(d)(1)(i), because it is being determined with reference to profits from mortgage-related business. Assume, furthermore, that the loan originator organization elects to include the bonus in the total compensation amount for the calendar year. Thus, the bonus is permissible under § 1026.36(d)(1)(iv)(B)(*1*) if it does not exceed 10 percent of the loan originator's total compensation, which in this example consists of the individual loan originator's salary and commissions, the contribution to the 401(k) plan (if the loan originator organization elects to include the contribution in the total compensation amount), and the performance bonus. Therefore, if the loan originator organization elects to include the 401(k) contribution in total compensation for these purposes, the loan originator organization may pay the individual loan originator a performance bonus of up to $20,000 (*i.e.*, 10 percent of $200,000 in total compensation). If the loan originator organization does not include the 401(k) contribution in calculating total compensation, or the 401(k) contribution is actually made in January of the following calendar year (in which case it cannot be included in total compensation for the initial calendar year), the bonus may be up to $18,333.33. If the loan originator organization includes neither the 401(k) contribution nor the performance bonus in the total compensation amount, the bonus may not exceed $16,500.

2. Assume that the compensation during a given calendar year of an individual loan originator employed by a creditor consists of only salary and commissions, and the individual loan originator does not participate in a designated tax-advantaged defined contribution plan. Assume further that the creditor uses a calendar-year accounting period. At the end of the calendar year, the creditor pays the individual loan originator two bonuses: a “performance” bonus based on the individual loan originator’s aggregate loan volume for a calendar year that is paid out of a bonus pool determined with reference to the profits of the mortgage origination business unit, and a year-end “holiday” bonus in the same amount to all company employees that is paid out of a company-wide bonus pool. Because the performance bonus is paid out of a bonus pool that is determined with reference to the profits of the mortgage origination business unit, it is compensation that is determined with reference to mortgage-related business profits, and the bonus is therefore subject to the 10-percent total compensation limit. If the company-wide bonus pool from which the “holiday” bonus is paid is derived in part from profits of the creditor’s mortgage origination business unit, then the combination of the “holiday” bonus and the performance bonus is subject to the 10-percent total compensation limit. The “holiday” bonus is not subject to the 10-percent total compensation limit if the bonus pool is determined with reference only to the profits of business units other than the mortgage origination business unit, as determined in accordance with reasonable accounting principles. If the “performance” bonus and the “holiday” bonus in the aggregate do not exceed 10 percent of the individual loan originator’s total compensation, the bonuses may be paid under § 1026.36(d)(1)(iv)(B)(*1*) without the necessity of determining from which bonus pool they were paid or whether they were determined with reference to the profits of the creditor's mortgage origination business unit.

G. *Reasonable reliance by individual loan originator on accounting or statement by person paying compensation.* An individual loan originator is deemed to comply with its obligations regarding receipt of compensation under § 1026.36(d)(1)(iv)(B)(*1*) if the individual loan originator relies in good faith on an accounting or a statement provided by the person who determined the individual loan originator's compensation under a non-deferred profits-based compensation plan pursuant to § 1026.36(d)(1)(iv)(B)(*1*) and where the statement or accounting is provided within a reasonable time period following the person's determination.

vi. *Individual loan originators who originate ten or fewer transactions.* Assuming that the conditions in § 1026.36(d)(1)(iv)(A) are met, § 1026.36(d)(1)(iv)(B)(*2*) permits compensation to an individual loan originator under a non-deferred profits-based compensation plan even if the payment or contribution is directly or indirectly based on the terms of multiple individual loan originators' transactions if the individual is a loan originator (as defined in § 1026.36(a)(1)(i)) for ten or fewer consummated transactions during the 12-month period preceding the compensation determination. For example, assume a loan originator organization employs two individual loan originators who originate transactions subject to § 1026.36 during a given calendar year. Both employees are individual loan originators as defined in § 1026.36(a)(1)(ii), but only one of them (individual loan originator B) acts as a loan originator in the normal course of business, while the other (individual loan originator A) is called upon to do so only occasionally and regularly performs other duties (such as serving as a manager). In January of the following calendar year, the loan originator organization formally determines the financial performance of its mortgage business for the prior calendar year. Based on that determination, the loan originator organization on February 1 decides to pay a bonus to the individual loan originators out of a company bonus pool. Assume that, between February 1 of the prior calendar year and January 31 of the current calendar year, individual loan originator A was the loan originator for eight consummated transactions, and individual loan originator B was the loan originator for 15 consummated transactions. The loan originator organization may award the bonus to individual loan originator A under § 1026.36(d)(1)(iv)(B)(*2*). The loan originator organization may not award the bonus to individual loan originator B relying on the exception under § 1026.36(d)(1)(iv)(B)(*2*) because it would not apply, although it could award a bonus pursuant to the 10-percent total compensation limit under §1026.36(d)(1)(iv)(B)(*1*) if the requirements of that provision are complied with.

* * * * *

6. *Periodic changes in loan originator compensation and terms of transactions.* Section 1026.36 does not limit a creditor or other person from periodically revising the compensation it agrees to pay a loan originator. However, the revised compensation arrangement must not result in payments to the loan originator that are based on the terms of a credit transaction. A creditor or other person might periodically review factors such as loan performance, transaction volume, as well as current market conditions for loan originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator. For example, assume that during the first six months of the year, a creditor pays $3,000 to a particular loan originator for each loan delivered, regardless of the terms of the transaction. After considering the volume of business produced by that loan originator, the creditor could decide that as of July 1, it will pay $3,250 for each loan delivered by that particular loan originator, regardless of the terms of the transaction.

No violation occurs even if the loans made by the creditor after July 1 generally carry a higher interest rate than loans made before that date, to reflect the higher compensation.

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36(f) Loan originator qualification requirements.

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Paragraph 36(f)(3).

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Paragraph 36(f)(3)(i).

1. *Criminal and credit histories.* Section 1026.36(f)(3)(i) requires the loan originator organization to obtain, for any of its individual loan originator employees who is not required to be licensed and is not licensed as a loan originator pursuant to the SAFE Act, a criminal background check, a credit report, and information related to any administrative, civil, or criminal determinations by any government jurisdiction. The requirement applies to individual loan originator employees who were hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual). A credit report may be obtained directly from a consumer reporting agency or through a commercial service. A loan originator organization with access to the NMLSR can meet the requirement for the criminal background check by reviewing any criminal background check it receives upon compliance with the requirement in 12 CFR 1007.103(d)(1) and can meet the requirement to obtain information related to any administrative, civil, or criminal determinations by any government jurisdiction by obtaining the information through the NMLSR. Loan originator organizations that do not have access to these items through the

NMLSR may obtain them by other means. For example, a criminal background check may be obtained from a law enforcement agency or commercial service. Information on any past administrative, civil, or criminal findings (such as from disciplinary or enforcement actions) may be obtained from the individual loan originator.

2. *Retroactive obtaining of information not required.* Section 1026.36(f)(3)(i) does not require the loan originator organization to obtain the covered information for an individual whom the loan originator organization hired as a loan originator before January 1, 2014, and screened under applicable statutory or regulatory background standards in effect at the time of hire. However, if the individual subsequently ceases to be employed as a loan originator by that loan originator organization, and later resumes employment as a loan originator by that loan originator organization (or any other loan originator organization), the loan originator organization is subject to the requirements of § 1026.36(f)(3)(i).

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Paragraph 36(f)(3)(ii).

1. *Scope of review.* Section 1026.36(f)(3)(ii) requires the loan originator organization to review the information that it obtains under § 1026.36(f)(3)(i) and other reasonably available information to determine whether the individual loan originator meets the standards in § 1026.36(f)(3)(ii). Other reasonably available information includes any information the loan originator organization has obtained or would obtain as part of a reasonably prudent hiring process, including information obtained from application forms, candidate interviews, other reliable information and evidence provided by a candidate, and reference checks. The requirement applies to individual loan originator employees who were hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were

no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual).

2. *Retroactive determinations not required*. Section 1026.36(f)(3)(ii) does not require the loan originator organization to review the covered information and make the required determinations for an individual whom the loan originator organization hired as a loan originator on or before January 1, 2014 and screened under applicable statutory or regulatory background standards in effect at the time of hire. However, if the individual subsequently ceases to be employed as a loan originator by that loan originator organization, and later resumes employment as a loan originator by that loan originator organization (or any other loan originator organization), the loan originator organization employing the individual is subject to the requirements of §1026.36(f)(3)(ii).

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36(i) Prohibition on financing credit insurance.

1. *Financing credit insurance premiums or fees*. In the case of single-premium credit insurance, a creditor violates § 1026.36(i) by adding the credit insurance premium or fee to the amount owed by the consumer at closing. In the case of monthly-pay credit insurance, a creditor violates § 1026.36(i) if, upon the close of the monthly period in which the premium or fee is due, the creditor includes the premium or fee in the amount owed by the consumer.

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Section 1026.41—Periodic Statements for Residential Mortgage Loans

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41(b) Timing of the periodic statement.

1. *Reasonably prompt time.* Section 1026.41(b) requires that the periodic statement be delivered or placed in the mail no later than a reasonably prompt time after the payment due date or the end of any courtesy period. Delivering, emailing or placing the periodic statement in the mail within four days of the close of the courtesy period of the previous billing cycle generally would be considered reasonably prompt.

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41(d) Content and layout of the periodic statement.

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3. *Terminology.* A servicer may use terminology other than that found on the sample periodic statements in appendix H-30, so long as the new terminology is commonly understood. For example, servicers may take into consideration regional differences in terminology and refer to the account for the collection of taxes and insurance, referred to in § 1026.41(d) as the “escrow account,” as an “impound account.”

* * * * *

41(d)(4) Transaction Activity.

1. *Meaning.* Transaction activity includes any transaction that credits or debits the amount currently due. This is the same amount that is required to be disclosed under § 1026.41(d)(1)(iii). Examples of such transactions include, without limitation:

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41(e)(3) Coupon book exemption.

1. *Fixed rate.* For guidance on the meaning of “fixed rate” for purposes of § 1026.41(e)(3), see § 1026.18(s)(7)(iii) and its commentary.

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41(e)(4) Small servicers.

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41(e)(4)(iii) Small servicer determination.

1. *Loans obtained by merger or acquisition.* Any mortgage loans obtained by a servicer or an affiliate as part of a merger or acquisition, or as part of the acquisition of all of the assets or liabilities of a branch office of a creditor, should be considered mortgage loans for which the servicer or an affiliate is the creditor to which the mortgage loan is initially payable. A branch office means either an office of a depository institution that is approved as a branch by a Federal or State supervisory agency or an office of a for-profit mortgage lending institution (other than a depository institution) that takes applications from the public for mortgage loans.

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Corrections to FR Doc. 2013-16962

In FR Doc. 2013-16962 appearing on page 44685 in the **Federal Register** on Wednesday July 24, 2013, the following correction is made:

Supplement I to Part 1026 [Corrected]

1. On page 44725, in the second column, amendatory instruction 11.A.i.b is corrected to read "Under *Paragraph 41(e)(4)(iii) Small servicer determination*, paragraph 2 is amended and paragraph 3 is added."

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

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43(b) Definitions.

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43(b)(8) Mortgage-related obligations.

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4. *Mortgage insurance, guarantee, or similar charges*. Section 1026.43(b)(8) includes in the evaluation of mortgage-related obligations premiums or charges protecting the creditor against the consumer's default or other credit loss. This includes all premiums or similar charges, whether denominated as mortgage insurance, guarantee, or otherwise, as determined according to applicable State or Federal law. For example, monthly "private mortgage insurance" payments paid to a non-governmental entity, annual "guarantee fee" payments required by a Federal housing program, and a quarterly "mortgage insurance" payment paid to a State agency administering a housing program are all mortgage-related obligations for purposes of § 1026.43(b)(8). Section 1026.43(b)(8) includes these charges in the definition of mortgage-related obligations if the creditor requires the consumer to pay them, even if the consumer is not legally obligated to pay the charges under the terms of the insurance program. For example, if a mortgage insurance program obligates the creditor to make recurring mortgage insurance payments, and the creditor requires the consumer to reimburse the creditor for such recurring payments, the consumer's payments are mortgage-related obligations for purposes of § 1026.43(b)(8). However, if a mortgage insurance program obligates the creditor to make recurring mortgage insurance payments, and the creditor does not require the consumer to reimburse the creditor for the cost of the mortgage insurance payments, the recurring mortgage insurance payments are not mortgage-related obligations for purposes of § 1026.43(b)(8).

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43(c) Repayment ability.

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43(c)(3) Verification using third-party records.

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6. *Verification of current debt obligations*. Section 1026.43(c)(3) does not require creditors to obtain additional records to verify the existence or amount of obligations shown on a consumer's credit report or listed on the consumer's application, absent circumstances described in comment 43(c)(3)-3. Under § 1026.43(c)(3)(iii), if a creditor relies on a consumer's credit report to verify a consumer's current debt obligations and the consumer's application lists a debt obligation not shown on the credit report, the creditor may consider the existence and amount of the obligation as it is stated on the consumer's application. The creditor is not required to further verify the existence or amount of the obligation, absent circumstances described in comment 43(c)(3)-3.

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43(e) Qualified mortgages.

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43(e)(4) Qualified mortgage defined—special rules.

1. *Alternative definition*. Subject to the sunset provided under § 1026.43(e)(4)(iii), § 1026.43(e)(4) provides an alternative definition of qualified mortgage to the definition provided in § 1026.43(e)(2). To be a qualified mortgage under §1026.43(e)(4), the transaction must satisfy the requirements under § 1026.43(e)(2)(i) through (iii), in addition to being one of the types of loans specified in § 1026.43(e)(4)(ii)(A) through (E).

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Paragraph 43(e)(5).

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8. *Transfer to another qualifying creditor*. Under § 1026.43(e)(5)(ii)(B), a qualified mortgage under § 1026.43(e)(5) may be sold, assigned, or otherwise transferred at any time to another creditor that meets the requirements of § 1026.43(e)(5)(i)(D). That section requires that a creditor, during the preceding calendar year, together with all affiliates, originated 500 or fewer first-lien covered transactions and had total assets less than $2 billion (as adjusted for inflation) at the end of the preceding calendar year. A qualified mortgage under § 1026.43(e)(5) transferred to a creditor that meets these criteria would retain its qualified mortgage status even if it is transferred less than three years after consummation.

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43(f) Balloon-Payment qualified mortgages made by certain creditors.

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Paragraph 43(f)(2)(iii).

1. *Supervisory sales*. Section 1026.43(f)(2)(iii) facilitates sales that are deemed necessary by supervisory agencies to revive troubled creditors and resolve failed creditors. A balloon-payment qualified mortgage under § 1026.43(f)(1) retains its qualified mortgage status if it is sold, assigned, or otherwise transferred to another person pursuant to: (1) a capital restoration plan or other action under 12 U.S.C. 1831o; (2) the actions or instructions of any person acting as conservator, receiver, or bankruptcy trustee; (3) an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law; or (4) an agreement between the creditor and such an agency. A balloon-payment qualified mortgage under § 1026.43(f)(1) that is sold, assigned, or otherwise transferred under these circumstances retains its qualified mortgage status regardless of how long after consummation it is sold and regardless of the size or other characteristics of the transferee. Section 1026.43(f)(2)(iii) does

not apply to transfers done to comply with a generally applicable regulation with future effect designed to implement, interpret, or prescribe law or policy in the absence of a specific order by or a specific agreement with a governmental agency described in § 1026.43(f)(2)(iii) directing the sale of one or more qualified mortgages under § 1026.43(f)(1) held by the creditor or one of the other circumstances listed in § 1026.43(f)(2)(iii). For example, a balloon-payment qualified mortgage under § 1026.43(f)(1) that is sold pursuant to a capital restoration plan under 12 U.S.C. 1831o would retain its status as a qualified mortgage following the sale. However, if the creditor simply chose to sell the same qualified mortgage as one way to comply with general regulatory capital requirements in the absence of supervisory action or agreement the transaction would lose its status as a qualified mortgage following the sale unless it qualifies under another definition of qualified mortgage.

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[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED "AMENDMENTS TO THE 2013 MORTGAGE RULES UNDER THE EQUAL CREDIT OPPORTUNITY ACT (REGULATION B), REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X), AND THE TRUTH IN LENDING ACT (REGULATION Z)"]

Dated: September 12, 2013.

Richard Cordray

Richard Cordray,

Director, Bureau of Consumer Financial Protection.