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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1024 and 1026

[Docket No. CFPB-2012-0028]

RIN 3170-AA19

Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: Sections 1098 and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) direct the Bureau to publish rules and forms that combine certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act and the Real Estate Settlement Procedures Act. Consistent with this requirement, the Bureau is amending Regulation X (Real Estate Settlement Procedures Act) and Regulation Z (Truth in Lending) to establish new disclosure requirements and forms in Regulation Z for most closed-end consumer credit transactions secured by real property. In addition to combining the existing disclosure requirements and implementing new requirements imposed by the Dodd-Frank Act, the final rule provides extensive guidance regarding compliance with those requirements.

DATES: The rule is effective August 1, 2015.

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SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

A. Background

For more than 30 years, Federal law has required lenders to provide two different disclosure forms to consumers applying for a mortgage. The law also has generally required two different forms at or shortly before closing on the loan. Two different Federal agencies developed these forms separately, under two Federal statutes: the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act of 1974 (RESPA). The information on these forms is overlapping and the language is inconsistent. Not surprisingly, consumers often find the forms confusing. It is also not surprising that lenders and settlement agents find the forms burdensome to provide and explain.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directs the Bureau to integrate the mortgage loan disclosures under TILA and RESPA sections 4 and 5.[1] Section 1032(f) of the Dodd-Frank Act mandated that the Bureau propose for public comment rules and model disclosures that integrate the TILA and RESPA disclosures by July 21, 2012.[2] The Bureau satisfied this statutory mandate and issued a proposed rule and forms on July 9, 2012 (the TILA-RESPA Proposal or the proposal).[3] To accomplish this, the Bureau engaged in extensive consumer and industry research, analysis of public comment, and public outreach

[1] Dodd-Frank Act sections 1098 & 1100A, codified at 12 U.S.C. 2603(a) & 15 U.S.C. 1604(b), respectively.
[2] 12 U.S.C. 5532(f).
[3] *See* Press release, U.S. Bureau of Consumer Fin. Prot., *Consumer Financial Protection Bureau proposes "Know Before You Owe" mortgage forms* (July 9, 2012), available at http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-proposes-know-before-you-owe-mortgage-forms/; *see also* Blog post, U.S. Bureau of Consumer Fin. Prot., *Know Before You Owe: Introducing our proposed mortgage disclosure forms* (July 9, 2012), available at http://www.consumerfinance.gov/blog/know-before-you-owe-introducing-our-proposed-mortgage-disclosure-forms/.

for more than a year. After issuing the proposal, the Bureau conducted a large-scale quantitative validation study of its integrated disclosures with 858 consumers, which concluded that the Bureau's integrated disclosures had on average statistically significant better performance than the current disclosures under TILA and RESPA. The Bureau is now finalizing a rule with new, integrated disclosures (the TILA-RESPA Final Rule or the final rule).[4] The final rule also provides a detailed explanation of how the forms should be filled out and used.

The first new form (the Loan Estimate) is designed to provide disclosures that will be helpful to consumers in understanding the key features, costs, and risks of the mortgage for which they are applying. This form will be provided to consumers within three business days after they submit a loan application. The second form (the Closing Disclosure) is designed to provide disclosures that will be helpful to consumers in understanding all of the costs of the transaction. This form will be provided to consumers three business days before they close on the loan.

The forms use clear language and design to make it easier for consumers to locate key information, such as interest rate, monthly payments, and costs to close the loan. The forms also provide more information to help consumers decide whether they can afford the loan and to compare the cost of different loan offers, including the cost of the loans over time.

In developing the new Loan Estimate and Closing Disclosure forms, the Bureau has reconciled the differences between the existing forms and combined several other mandated

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[4] See part III below for a discussion of the Bureau's qualitative testing of prototypes of the forms with more than 100 consumers, lenders, mortgage brokers, and settlement agents before issuing the proposal and its quantitative testing of the forms with 858 consumers across the country. This part also describes the Bureau's outreach efforts, including the panel convened by the Bureau to examine ways to minimize the burden of the proposed rule on small businesses, as well as the Bureau's handling of the over 2,800 public comments the Bureau received during the public comment period that followed the issuance of the proposal and other information on the record.

disclosures, such as the appraisal notice under the Equal Credit Opportunity Act and the servicing application disclosure under RESPA. The Bureau also has responded to industry complaints of uncertainty about how to fill out the existing forms by providing detailed instructions on how to complete the new forms.[5] This should reduce the burden on lenders and others in preparing the forms in the future.

B. Scope of the Final Rule

The final rule applies to most closed-end consumer mortgages. It does not apply to home equity lines of credit, reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to real property (in other words, land). The final rule also does not apply to loans made by a creditor who makes five or fewer mortgages in a year.[6]

C. The Loan Estimate

The Loan Estimate form replaces two current Federal forms. It replaces the Good Faith Estimate designed by the Department of Housing and Urban Development (HUD) under RESPA and the "early" Truth in Lending disclosure designed by the Board of Governors of the Federal Reserve System (the Board) under TILA.[7] The final rule and the Official Interpretations (on which creditors and other persons can rely) contain detailed instructions as to how each line on the Loan Estimate form should be completed.[8] There are sample forms for different types of loan products.[9] The Loan Estimate form also incorporates new disclosures required by Congress

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[5] This guidance is provided in the regulations and the Official Interpretations, which are in Supplement I.

[6] For additional discussion of the scope of the final rule, see part V below regarding § 1026.19, Coverage of Integrated Disclosure Requirements.

[7] These disclosures are available at http://www.hud.gov/offices/hsg/rmra/res/gfestimate.pdf &http://ecfr.gpoaccess.gov/graphics/pdfs/ec27se91.024.pdf.

[8] The requirements for the Loan Estimate are in § 1026.37. Additional discussion of this and other sections of the rule is provided in the relevant portion of part V below.

[9] Appendix H to the final rule provides examples of how to fill out these forms for a variety of different loans, including loans with fixed or adjustable rates or features such as balloon payments and prepayment penalties.

under the Dodd-Frank Act.[10]

Provision by mortgage broker. Recognizing that consumers may work more closely with a mortgage broker, under the final rule and similar to the current rules, either a mortgage broker or creditor is required to provide the Loan Estimate form upon receipt of an application by a mortgage broker. However, even if the mortgage broker provides the Loan Estimate, the creditor remains responsible for complying with all requirements concerning provision of the form.[11]

Timing. The creditor or broker must give the form to the consumer no later than three business days after the consumer applies for a mortgage loan.[12] The final rule contains a definition of what constitutes an "application" for these purposes, which consists of the consumer's name, income, social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought.[13]

Limitation on fees. Consistent with current law, the creditor generally cannot charge consumers any fees until after the consumers have been given the Loan Estimate form and the consumers have communicated their intent to proceed with the transaction. There is an exception that allows creditors to charge fees to obtain consumers' credit reports.[14]

Disclaimer on early estimates. Creditors and other persons may provide consumers with written estimates prior to application. The rule requires that any such written estimates contain a disclaimer to prevent confusion with the Loan Estimate form. This disclaimer is required for advertisements.[15]

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[10] For a discussion of these disclosures, see part V.B below.
[11] This provision is in § 1026.19(e)(1)(ii).
[12] This provision is in § 1026.19(e)(1)(iii).
[13] The definition of "application" is in § 1026.2(a)(3).
[14] This provision is in § 1026.19(e)(2)(i).
[15] This provision is in § 1026.19(e)(2)(ii).

D. The Closing Disclosure

The Closing Disclosure form replaces the current form used to close a loan, the HUD-1, which was designed by HUD under RESPA. It also replaces the revised Truth in Lending disclosure designed by the Board under TILA.[16] The rule and the Official Interpretations (on which creditors and other persons can rely) contain detailed instructions as to how each line on the Closing Disclosure form should be completed.[17] The Closing Disclosure form contains additional new disclosures required by the Dodd-Frank Act and a detailed accounting of the settlement transaction.

Timing. The creditor must give consumers the Closing Disclosure form to consumers so that they receive it at least three business days before the consumer closes on the loan.[18] If the creditor makes certain significant changes between the time the Closing Disclosure form is given and the closing – specifically, if the creditor makes changes to the APR above 1/8 of a percent for most loans (and 1/4 of a percent for loans with irregular payments or periods), changes the loan product, or adds a prepayment penalty to the loan – the consumer must be provided a new form and an additional three-business-day waiting period after receipt of the new form. Less significant changes can be disclosed on a revised Closing Disclosure form provided to the consumer at or before closing, without delaying the closing.[19] This is a change from the proposal, which would have required that most changes cause an additional three-business-day waiting period before the consumer could close on the loan. The Bureau received extensive public comment raising concerns about this aspect of the proposal, especially about its impact to

[16] These disclosures are available at http://www.hud.gov/offices/adm/hudclips/forms/files/1.pdf & http://ecfr.gpoaccess.gov/graphics/pdfs/ec27se91.024.pdf.
[17] The requirements for the Closing Disclosure are in § 1026.38(a)(3).
[18] This provision is in § 1026.19(f)(1)(ii).
[19] This provision is in § 1026.19(f)(2).

cause frequent closing delays in the residential real estate market. In response to the public comments received on this issue, the Bureau decided to limit the types of changes that will result in an additional three-business-day waiting period to the three changes described above. This requirement will provide the important protection to consumers of an additional three-day waiting period for these significant changes, but will not cause closing delays for less significant costs that may frequently change.

Provision of disclosures. Currently, settlement agents are required to provide the HUD-1 under RESPA, while creditors are required to provide the revised Truth in Lending disclosure under TILA. Under the final rule, the creditor is responsible for delivering the Closing Disclosure form to the consumer, but creditors may use settlement agents to provide the Closing Disclosure, provided that they comply with the final rule's requirements for the Closing Disclosure.[20] The final rule acknowledges settlement agents' longstanding involvement in the closing of real estate and mortgage loan transactions, as well as their preparation and delivery of the HUD-1. The final rule avoids creating uncertainty regarding the role of settlement agents and also leaves sufficient flexibility for creditors and settlement agents to arrive at the most efficient means of preparation and delivery of the Closing Disclosure to consumers.

E. Limits on Closing Cost Increases

Similar to existing law, the final rule restricts the circumstances in which consumers can be required to pay more for settlement services – the various services required to complete a loan, such as appraisals, inspections, etc. – than the amount stated on their Loan Estimate form. Unless an exception applies, charges for the following services cannot increase: (1) the creditor's or mortgage broker's charges for its own services; (2) charges for services provided by an

[20] This provision is in § 1026.19(f)(1).

affiliate of the creditor or mortgage broker; and (3) charges for services for which the creditor or mortgage broker does not permit the consumer to shop. Charges for other services can increase, but generally not by more than 10 percent, unless an exception applies.[21]

The exceptions include, for example, situations when: (1) the consumer asks for a change; (2) the consumer chooses a service provider that was not identified by the creditor; (3) information provided at application was inaccurate or becomes inaccurate; or (4) the Loan Estimate expires. When an exception applies, the creditor generally must provide an updated Loan Estimate form within three business days.

F. Proposals Not Adopted in the Final Rule

The proposed rule would have redefined the way the Annual Percentage Rate or "APR" is calculated. Under the proposal, the APR would have encompassed almost all of the up-front costs of the loan.[22] The Bureau explained in the proposal that it believed the change would make it easier for consumers to use the APR to compare loans and easier for industry to calculate the APR. The proposed rule also would have required creditors to keep records of the Loan Estimate and Closing Disclosure forms provided to consumers in an electronic, machine readable format to make it easier for regulators to monitor compliance.[23]

Based on public comments it received raising implementation and cost concerns regarding these two proposals, the Bureau has determined not to finalize these provisions in the final rule. The Bureau continues to believe these ideas may have benefits for consumers and industry, however, and intends to continue following up on both issues. For example, the Bureau intends to work closely with industry on private data standard initiatives to promote consistency

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[21] The limitations and the exceptions discussed below are in § 1026.19(e)(3) and (4).
[22] These proposed revisions are discussed below in part V, in the section-by-section analysis of § 1026.4.
[23] This proposed provision is discussed below in part V, in the section-by-section analysis of § 1026.25.

in data transmission and storage. After additional study, the Bureau may propose rules on either or both topics.

The Bureau also decided not to require in the final rule a disclosure item that had been mandated by the Dodd-Frank Act, but that caused confusion at its consumer testing. Specifically, the Dodd-Frank Act requires creditors to disclose, in the case of residential mortgage loans, "the approximate amount of the wholesale rate of funds in connection with the loan."[24] To implement this requirement, the proposal would have required creditors to disclose the approximate cost of funds used to make a loan on the Closing Disclosure.[25] Because consumer testing conducted by the Bureau prior to its issuance of the proposal suggested that consumers do not understand the disclosure and that it would not provide a meaningful benefit to consumers, the Bureau alternatively proposed to exempt creditors from the cost of funds disclosure requirement.

The Bureau considered the comments it received on this disclosure in addition to the consumer testing results. The comments echoed the Bureau's concerns regarding consumer confusion from this disclosure, and also raised implementation, compliance, and cost concerns. The Bureau has decided to exempt creditors from the cost of funds disclosure requirement. The Bureau believes this approach will simplify the disclosure forms, making them more effective for consumers, and reduce compliance burden.[26]

G. Effective Date

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[24] 15 U.S.C. 1638(a)(17).

[25] This proposed provision is discussed below in part V, in the section-by-section analysis of § 1026.38(o)(6).

[26] However, the Bureau is finalizing the Dodd-Frank Act requirement to include the total interest percentage disclosure on both the Loan Estimate and Closing Disclosure, because consumers at the Bureau's consumer testing were able to understand and use the total interest percentage disclosure on both the Loan Estimate and Closing Disclosure. This proposed provision is discussed below in part V, in the section-by-section analyses of §§ 1026.37(l)(3) and 1026.38(o)(5).

The final rule is effective on August 1, 2015. The final rule applies to transactions for which the creditor or mortgage broker receives an application on or after that date, except that new § 1026.19(e)(2) and the amendments of this final rule to § 1026.28(a)(1) and the commentary to § 1026.29 become effective on that date, without respect to whether an application has been received on that date.[27]

II. Background

A. The Mortgage Market

Overview of the Market and the Mortgage Crisis

The mortgage market is the single largest market for consumer financial products and services in the United States, with approximately $9.4 trillion in loans outstanding.[28] During the last decade, the market went through an unprecedented cycle of expansion and contraction that was fueled in part by the securitization of mortgages and creation of increasingly sophisticated derivative products designed to mitigate accompanying risks to investors. So many other parts of the American financial system were drawn into mortgage-related activities that when the bubble collapsed in 2008, it sparked the most severe recession in the United States since the Great Depression.[29] In the last quarter of 2008 and early in 2009, GDP was falling at an annual rate of roughly 6 percent.[30] By the Fall of 2009, unemployment reached a peak of 10 percent.[31] The percentage of loans in the foreclosure process reached its peak of 4.63 in both the first and

[27] For additional discussion regarding the effective date of the final rule, see part VI below.
[28] Bd. of Governors of the Fed. Reserve Sys., *Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts* (June 2013).
[29] See Thomas F. Siems, *Branding the Great Recession*, Fin. Insights, May 13, 2012, Vol. 1 Issue 1 at 3, available at http://www.dallasfed.org/assets/documents/banking/firm/fi/fi1201.pdf (stating that the [great recession] "was the longest and deepest economic contraction, as measured by the drop in real GDP, since the Great Depression.").
[30] Bureau of Econ. Analysis, U.S. Dep't of Commerce, *Real Gross Domestic Product* (Nov. 7, 2013), available at http://research.stlouisfed.org/fred2/series/GDPC1.
[31] Bureau of Labor Statistics, U.S. Dep't of Labor, *Labor Force Statistics from the Current Population Survey* (Nov. 19, 2013), available at http://data.bls.gov/timeseries/LNS14000000 (Labor Force Statistics from 2003 through 2013)

the fourth quarters of 2010.[32] From peak to trough, the fall in housing prices is estimated to have resulted in about $7 trillion in household wealth losses.[33] Further, five years after the collapse of Lehman Brothers and AIG, the United States continues to grapple with the fallout.

The expansion in this market was accompanied by particular economic conditions (including an era of low interest rates and rising housing prices) and changes within the industry. Interest rates dropped significantly – by more than 20 percent – from 2000 through 2003.[34] Housing prices increased dramatically – about 152 percent – between 1997 and 2006.[35] Driven by the decrease in interest rates and the increase in housing prices, the volume of refinancings increased rapidly, from about 2.5 million loans in 2000 to more than 15 million in 2003.[36]

In the mid-2000s, the market experienced a steady deterioration of credit standards in mortgage lending, with evidence that loans were made solely against collateral, or even against expected increases in the value of collateral, and without consideration of ability to repay. This deterioration of credit standards was particularly evidenced by the growth of "subprime" and "Alt-A" products.[37] Subprime products were sold primarily to consumers with poor or no credit

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[32] Press Release, Mortg. Bankers Ass'n, *Short-term Delinquencies Fall to Pre-Recession Levels, Loans in Foreclosure Tie All-Time Record in Latest MBA National Delinquency Survey* (Feb. 17, 2011), available at http://www.mortgagebankers.org/NewsandMedia/PressCenter/75706.htm.

[33] Bd. Of Governors of the Fed. Reserve Sys., *The U.S. Housing Market: Current Conditions and Policy Considerations*, at 3 (2012), available at http://www.federalreserve.gov/publications/other-reports/files/housing-white-paper-20120104.pdf.

[34] *See* U.S. Dep't. of Hous. and Urban Dev., *An Analysis of Mortgage Refinancing, 2001-2003* (2004), available at www.huduser.org/Publications/pdf/MortgageRefinance03.pdf; Souphala Chomsisengphet & Anthony Pennington-Cross, *The Evolution of the Subprime Mortgage Market*, 88, No. 1 Fed. Res. Bank of St. Louis Review, at 48 (Jan./Feb. 2006), available at http://research.stlouisfed.org/publications/review/article/5019.

[35] The Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report* at 156 (2011) (FCIC Report), available at http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

[36] *An Analysis of Mortgage Refinancing, 2001-2003*, at 1.

[37] FCIC Report at 88. These products included most notably 2/28 and 3/27 hybrid adjustable rate mortgages (ARMs) and option ARM products. *Id.* at 106. A hybrid ARM is an adjustable rate mortgage loan that has a low fixed introductory rate for a certain period of time. An option ARM is an adjustable rate mortgage loan that has a scheduled loan payment that may result in negative amortization for a certain period of time, but that expressly permits specified larger payments in the contract or servicing documents, such as an interest-only payment or a fully amortizing payment. For these loans, the scheduled negatively amortizing payment was typically described in

history, although there is evidence that some consumers who would have qualified for "prime" loans were steered into subprime loans as well.[38] The Alt-A category of loans permitted consumers to take out mortgage loans while providing little or no documentation of income or other evidence of repayment ability. Because these loans involved additional risk, they were typically more expensive to consumers than "prime" mortgages, although many of them had very low introductory interest rates. In 2003, subprime and Alt-A origination volume was about $400 billion; in 2006, it had reached $830 billion.[39]

So long as housing prices were continuing to increase, it was relatively easy for consumers to refinance their existing loans into more affordable products to avoid interest rate resets and other adjustments. When housing prices began to decline in 2005, however, refinancing became more difficult and delinquency rates on subprime and Alt-A products increased dramatically.[40] More and more consumers, especially those with subprime and Alt-A loans, were unable or unwilling to make their mortgage payments. An early sign of the mortgage crisis was an upswing in early payment defaults – generally defined as borrowers being 60 or more days delinquent within the first year. Prior to 2006, 1.1 percent of mortgages would end up 60 or more days delinquent within the first two years.[41] Taking a more expansive definition of early payment default to include 60 days delinquent within the first two years, this figure was

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marketing and servicing materials as the "optional payment." These products were often marketed to subprime customers.

[38] For example, the Federal Reserve Board on July 18, 2011, issued a consent cease and desist order and assessed an $85 million civil money penalty against Wells Fargo & Company of San Francisco, a registered bank holding company, and Wells Fargo Financial, Inc., of Des Moines. The order addresses allegations that Wells Fargo Financial employees steered potential prime-eligible consumers into more costly subprime loans and separately falsified income information in mortgage applications. In addition to the civil money penalty, the order requires that Wells Fargo compensate affected consumers. *See* Press Release, Bd. Of Governors of the Fed. Reserve Sys. (July 20, 2011), available at http://www.federalreserve.gov/newsevents/press/enforcement/20110720a.htm.

[39] Inside Mortgage Fin., *2011 Mortgage Statistical Annual: Mortgage Originations by Product*, at 20 (2011).

[40] FCIC Report at 215-217.

[41] CoreLogic's TrueStandings Servicing (reflects first-lien mortgage loans) (data service accessible only through paid subscription).

double the historic average during 2006, 2007 and 2008.[42] First payment defaults – mortgages taken out by consumers who never made a single payment – exceeded 1.5 percent of loans in early 2007.[43] In addition, as the economy worsened, the rates of serious delinquency (90 or more days past due or in foreclosure) for the subprime and Alt-A products began a steep increase from approximately 10 percent in 2006, to 20 percent in 2007, to more than 40 percent in 2010.[44]

The impact of this level of delinquencies was severe on creditors who held loans on their books and on private investors who purchased loans directly or through securitized vehicles. Prior to and during the bubble, the evolution of the securitization of mortgages attracted increasing involvement from financial institutions that were not directly involved in the extension of credit to consumers and from investors worldwide. Securitization of mortgages allows originating creditors to sell off their loans (and reinvest the funds earned in making new ones) to investors who want an income stream over time. Securitization had been pioneered by what are now called government-sponsored enterprises (GSEs), including the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). But by the early 2000s, large numbers of private financial institutions were deeply involved in creating increasingly complex mortgage-related investment vehicles through securities and derivative products. The private securitization-backed subprime and Alt-A mortgage market ground to a halt in 2007 in the face of the rising delinquencies on subprime and Alt-A products.[45]

While there remains debate about which market issues definitively sparked this crisis,

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[42] *Id.*
[43] *Id.*
[44] *Id.* at 217.
[45] *Id.* at 124.

there were several mortgage origination issues that pervaded the mortgage lending system prior to the crisis and are generally accepted as having contributed to its collapse. First, the market experienced a steady deterioration of credit standards in mortgage lending, particularly evidenced by the growth of subprime and Alt-A loans, which consumers were often unable or unwilling to repay.[46]

Second, the mortgage market saw a proliferation of more complex mortgage products with terms that were often difficult for consumers to understand. These products included most notably 2/28 and 3/27 Hybrid Adjustable Rate Mortgages and Option ARM products.[47] These products were often marketed to subprime and Alt-A customers. The appetite on the part of mortgage investors for such products often created inappropriate incentives for mortgage originators to originate these more expensive and profitable mortgage products.[48]

Third, responsibility for the regulation of consumer financial protection laws was spread across seven regulators including the Board, HUD, the Office of Thrift Supervision, the Federal Trade Commission, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration. Such a spread in responsibility may have hampered the government's ability to coordinate regulatory monitoring and response to such issues.[49]

In the wake of this financial crisis, Congress passed the Dodd-Frank Act to address many

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[46] FCIC Report at 88.

[47] *Id.* at 106. "Hybrid Adjustable Rate Mortgage" is a term frequently used to describe adjustable rate mortgage loans that have a low fixed introductory rate for a certain period of time. "Option ARM" is a term frequently used to describe adjustable rate mortgage loans that have a scheduled loan payment that may result in negative amortization for a certain period of time, but that expressly permit specified larger payments in the contract or servicing documents, such as an interest-only payment or a fully amortizing payment. For these loans, the scheduled negatively amortizing payment was typically described in marketing and servicing materials as the "optional payment."

[48] *Id.* at 109.

[49] *Id.* at 111.

of these concerns. In this Act, among other things, Congress created the Bureau and consolidated the rulemaking authority for many consumer financial protection statutes, including the two primary Federal consumer protection statutes governing mortgage origination, the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA), in the Bureau.[50] Congress also provided the Bureau with supervision authority for certain consumer financial protection statutes over certain entities, including insured depository institutions with total assets of over $10 billion and their affiliates, and certain other non-depository entities, including all companies that offer or provide origination, brokerage, or servicing of consumer mortgages.[51]

At the same time, Congress significantly amended the statutory requirements governing mortgage practices with the intent to restrict the practices that contributed to the crisis. For example, in response to concerns that some lenders made loans to consumers without sufficiently determining their ability to repay, section 1411 of the Dodd-Frank Act amended TILA to require that creditors make a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan.[52] Sections 1032(f), 1098, and 1100A of the Dodd-Frank Act address concerns that Federal mortgage disclosures did not adequately explain to consumers the terms of their loans (particularly complex adjustable rate or optional payment loans) by requiring new disclosure forms designed to improve consumer understanding of mortgage transactions (which is the subject of this final rule).[53] In addition, the Dodd-Frank Act established other new standards concerning a wide

[50] Sections 1011 and 1021 of the Dodd-Frank Act, 12 U.S.C. 5491, 5511. The Consumer Financial Protection Act is substantially codified at 12 U.S.C. 5481-5603.
[51] Sections 1024 through 1026 of title X of the Dodd-Frank Act, codified at 12 U.S.C. 5514-5516.
[52] Section 1411 of the Dodd-Frank Act, codified at 15 U.S.C. 1639c.
[53] Section 1032(f) of the Dodd-Frank Act, codified at 12 U.S.C. 5532(f). Sections 1098 and 1100A of the Dodd-Frank Act amend RESPA and TILA, respectively.

range of mortgage lending practices, including compensation for mortgage originators[54] and mortgage servicing.[55] For additional information, see the discussion below in part II.F.

Size of the Current Mortgage Origination Market

Even with the economic downturn and tightening of credit standards, approximately $1.9 trillion in mortgage loans were originated in 2012.[56] In exchange for an extension of mortgage credit, consumers promise to make regular mortgage payments and provide their home or real property as collateral. The overwhelming majority of homebuyers continue to use mortgage loans to finance at least some of the purchase price of their property. In 2012, 93.7 percent of all home purchases were financed with a mortgage credit transaction.[57]

Consumers may obtain mortgage credit to purchase a home, to refinance an existing mortgage, to access home equity, or to finance home improvement. Purchase loans and refinancings together produced 8.6 million new first-lien mortgage loan originations in 2012.[58] The proportion of loans that are for purchases as opposed to refinances varies with the interest rate environment and other market factors. In 2012, 72 percent of the market was refinance transactions and 28 percent was purchase loans, by volume.[59] Historically the distribution has been more even. In 2000, refinances accounted for 44 percent of the market while purchase

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[54] Sections 1402 through 1405 of the Dodd-Frank Act, codified at 15 U.S.C. 1639b.
[55] Sections 1418, 1420, 1463, and 1464 of the Dodd-Frank Act, codified at 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, & 1639g.
[56] Moody's Analytics, *Credit Forecast 2013* (2013) (Credit Forecast 2013), available at http://www.economy.com/default.asp (reflects first-lien mortgage loans) (data service accessibly only through paid subscription).
[57] Mortgage Markets Daily, *New Houses by Type of Financing*, available at *http://www.mortgagenewsdaily.com/data/financing-type.aspx*.
[58] Credit Forecast 2013.
[59] Inside Mortgage Fin., *Mortgage Originations by Product*, *in* Inside Mortgage Finance Issue 2013:08 (Mar. 1, 2013) (Inside Mortgage Finance Newsletter).

loans comprised 56 percent; in 2005, the two products were split evenly.[60]

With a home equity transaction, a homeowner uses his or her equity as collateral to secure consumer credit. The credit proceeds can be used, for example, to pay for home improvements. Home equity credit transactions and home equity lines of credit resulted in an additional $41 billion in mortgage loan originations in 2012.[61]

Shopping for Mortgage Loans

When shopping for a mortgage loan, research has shown that consumers are most concerned about the interest rate and their monthly payment.[62] Consumers may underestimate the possibility that interest rates and payments can increase later on, or they may not fully understand that this possibility exists. They also may not appreciate other costs that could arise later, such as prepayment penalties.[63] This focus on short term costs while underestimating long term costs may result in consumers taking out mortgage loans that are more costly than they realize.[64]

Research points to a relationship between consumer confusion about loan terms and

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[60] Inside Mortgage Fin., *2012 Mortgage Statistical Annual: Mortgage Originations by Product: 2000-2013 Data*, at 17 (2012). These percentages are based on the dollar amount of the loans.

[61] Inside Mortgage Fin. Newsletter.

[62] ICF Macro Int'l, *Summary of Findings: Design and Testing of Truth in Lending Disclosures for Closed-End Mortgages*, at 6 (July 2009) (Macro 2009 Closed-End Report), available at http://www.federalreserve.gov/boarddocs/meetings/2009/20090723/Full%20Macro%20CE%20Report.pdf.; *see also* Kleimann Communication Group, Inc., *Know Before You Owe: Evolution of the Integrated TILA-RESPA Disclosures* (July 2012), available at http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf.

[63] James Lacko & Janis Pappalardo, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms*, at 26 (2007) (finding borrowers had misunderstood key loan features, including the overall cost of the loan, future payment amount, ability to refinance, payment of up-front points and fees, whether the monthly payment included escrow for taxes and insurance, any balloon payment, whether the interest rate had been locked, whether the rate was adjustable or fixed, and any prepayment penalty), available at http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf.

[64] Oren Bar-Gill, *The Law, Economics and Psychology of Subprime Mortgage Contracts*, 94 Cornell L. Rev. 1073, 1079 (2009) (discussing how subprime borrowers may not fully understand the loan costs due to product complexity and deferral of loan costs into the future); *id*. at 1133 (explaining that borrower underestimation of mortgage loan cost distorts their decision to take out a loan, resulting in excessive borrowing), available at http://legalworkshop.org/wp-content/uploads/2009/07/cornell-a20090727-bar-gill.pdf.

conditions and an increased likelihood of adopting higher-cost, higher-risk mortgage loans in the years leading up to the mortgage crisis. A study of data from the 2001 Survey of Consumer Finances found that some adjustable rate mortgage loan borrowers, particularly those with below median income, underestimated or did not realize how much their interest rates could change.[65] These findings are consistent with a 2006 Government Accountability Office study, which raised concerns that mortgage loan disclosure laws did not require specific disclosures for adjustable rate loans.[66] This evidence suggests that borrowers who are not presented with clear, understandable information about their mortgage loan offer may lack an accurate understanding of the loan costs and risks.

The Mortgage Origination Process

Borrowers must go through a mortgage origination process to take out a mortgage loan. During this process, borrowers have two significant factors to consider: the costs that they pay to close the loan, and the costs over the life of the loan. For a given consumer seeking a mortgage of a given size, both factors can vary significantly, making the home purchase or refinance especially complex. Furthermore, for purchase transactions and to a much lesser extent for refinances, there are many actors involved in a mortgage origination. In addition to the lender and the borrower, a single transaction may involve a seller, mortgage broker, real estate agent, settlement agent, appraiser, multiple insurance providers, and local government clerks' and tax offices. These actors typically charge fees or commissions for the services they provide. Borrowers learn about the loan costs and the sources of those costs through a variety of sources,

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[65] Brian K. Bucks & Karen M. Pence, *Do Borrowers Know their Mortgage Terms?*, J. of Urb. Econ. (2008), available at http://works.bepress.com/karen_pence/5.

[66] U.S. Gov't Accountability Office, GAO-06-1112T, *Alternative Mortgage Products: Impact on Default Remains Unclear, but Disclosure of Risks to Borrowers Could Be Improved* (2006), available at http://www.gao.gov/new.items/d061112t.pdf.

including disclosures provided throughout the mortgage origination process.

Loan Terms. The loan terms affect how the loan is to be repaid, including the type of loan product,[67] the interest rate, the payment amount, and the length of the loan term. Among other things, the type of loan product determines whether the interest rate can change and, if so, when and by how much. A fixed rate loan sets the interest rate at origination, and the rate stays the same until the borrower pays off the loan. However, the interest rate on an adjustable rate loan is periodically reset based on an interest rate index. This shifting rate could change the borrower's monthly payment. Typically, an adjustable rate loan will combine both types of rates, so that the interest rate is fixed for a certain period of time before adjusting. For example, a 5/1 adjustable rate loan would have a fixed interest rate for five years, and then adjust every year until the loan ends. Any changes in the interest rate after the first five years would change the borrower's payments. Adjustable rate mortgages accounted for 30 percent of mortgage loan volume in 2000, and reached a recent high of 50 percent in 2004.[68] By contrast, adjustable rate mortgages accounted for only 10 percent of the mortgage loan market in 2012[69]; however, there is some early indication that adjustable rate mortgages are gaining market share again as interest rates for fixed rate mortgages are on the rise: the share of new mortgage applications for adjustable rate mortgages rose by 75% (from 4% to 7%) from March to August of 2013.[70]

Borrowers are usually required to make payments on a monthly basis. These payments

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[67] Types of loan products include a fixed rate loan, adjustable rate loan, and interest-only loan.
[68] Inside Mortgage Fin., *2012 Mortgage Statistical Annual: Mortgage Originations by Product: 2000-2013 Data*, at 17 (2012). These percentages are based on the dollar amount of the loans.
[69] Inside Mortgage Finance Newsletter.
[70] *Compare* Press Release, Mortgage Bankers Assoc., *Mortgage Applications Decrease in Latest Weekly MBA Survey* (Mar. 6, 2013), available at http://www.mbaa.org/NewsandMedia/PressCenter/83653.htm *with* Mortgage Bankers Assoc., *Mortgage Applications Decrease in Latest Weekly MBA Survey* (Aug. 28, 2013), available at http://www.mbaa.org/NewsandMedia/PressCenter/85466.htm.

typically are calculated to pay off the entire loan balance by the time the loan term ends.[71] The way a borrower's payments affect the amount of the loan balance over time is called amortization. Most borrowers take out fully amortizing loans, meaning that their payments are applied to both principal and interest so that the loan's principal balance will gradually decrease until it is completely paid off. The typical 30-year fixed rate loan has fully amortizing monthly payments that are calculated to pay off the loan in full over 30 years. However, loan amortization can take other forms. An interest only loan would require the borrower to make regular payments that cover interest but not principal. In some cases, these interest only payments end after a period of time (such as five years) and the borrower must begin making significantly higher payments that cover both interest and principal to amortize the loan over the remaining loan term. In other cases, the entire principal balance must be paid when the loan becomes due. Similarly, in a balloon loan, monthly payments are not fully amortizing, requiring the borrower to pay off a portion of the principal balance or the remaining principal balance in a larger "balloon payment" at specific points in the loan term or at the end of the loan term, respectively.

The time period that the borrower has to repay the loan is known as the loan term, and is specified in the mortgage contract. Many loans are set for a term of 30 years. Depending on the amortization type of the loan, it will either be paid in full or have a balance due at the end of the term.

Closing Costs. Closing costs are the costs of completing a mortgage transaction, including origination fees, appraisal fees, title insurance, taxes, settlement services, and homeowner's insurance. The borrower may pay an application or origination fee. Lenders

[71] Some loans may require a large final payment (or "balloon" payment) in addition to monthly payments.

generally also require an appraisal as part of the origination process in order to determine the value of the home. The appraisal helps the lender determine whether the home is valuable enough to act as collateral for the mortgage loan. The borrower is generally responsible for the appraisal fee, which may be paid at or before closing. Finally, lenders typically require borrowers to take out various insurance policies. Insurance protects the lender's collateral interest in the property. Homeowner's insurance protects against the risk that the home is damaged or destroyed, while title insurance protects the lender against the risk of claims against the borrower's legal right to the property. In addition, the borrower may be required to take out mortgage insurance which protects the lender in the event of default.

Application. In order to obtain a mortgage loan, borrowers must first apply through a loan originator that accepts applications for mortgage loans. There are two different kinds of such loan originators. A retail originator works directly for a mortgage lender. A mortgage lender that employs retail originators could be a bank or credit union, or it could be a specialized mortgage finance company. Some of these mortgage lenders may sell the loan soon after it is originated to an investor, and they are referred to as correspondent lenders. The other kind of loan originator is a mortgage broker. Mortgage brokers work with many different lenders and facilitate the transaction for the borrower.

A loan originator may help borrowers determine what kind of loan best suits their needs, and will collect their completed loan application. The application includes borrower credit and income information, along with information about the home to be purchased. A mortgage broker will pass this information on to a lender that will evaluate the borrower's credit risk using various factors, as described below. Consumers can apply to multiple lenders directly or through a mortgage broker in order to compare the loans that they are being offered. Once he or she has decided to move forward with the loan, the applicant notifies the loan originator or lender. An applicant can decide to pursue loans at multiple lenders at one time, but could incur fees in connection with each application. The loan originator will wait to receive notification from the consumer before taking more information from the borrower and giving the consumer's application to a loan underwriter.

Mortgage Application Processing. A loan underwriter reviews the application and additional information provided by the borrower, and verifies certain information in connection with regulatory requirements. The underwriter will assess whether the lender should take on the risk of making the mortgage loan. In order to make this decision, the underwriter considers whether the borrower can repay the loan, and whether the home is worth enough to act as collateral for the loan. If the underwriter finds that the borrower and the home qualify, the underwriter will approve the borrower's mortgage application.

Depending on the loan terms, including the loan amount, as discussed above, lenders may require borrowers to obtain title insurance, homeowner's insurance, private mortgage insurance, and other services. The borrower may shop for certain closing services on his or her own.

Closing. After being accepted for a mortgage loan, completing any closing requirements, and receiving necessary disclosures, the borrower can close on the loan. Multiple parties may participate at closing, including the borrower, the settlement agent or a notary, and attorneys for the borrower, the seller, and the lender.

The settlement agent ensures that all the closing requirements are met, that all closing documents are completed in full, and that all fees are collected. The settlement agent makes sure that the borrower signs these closing documents, including a promissory note and the security instrument. This promissory note is evidence of the loan debt, and documents the borrower's promise to pay back the loan. It states the terms of the loan, including the interest rate and length. The security instrument, in the form of a mortgage, provides the home as collateral for the loan. A deed of trust is similar to a mortgage, except that a trustee is named to hold title to the property as security for the loan. The borrower receives title to the property after the loan is paid in full. Both a mortgage and deed of trust allow the lender to foreclose and sell the home if the borrower does not repay the loan.

In the case of a purchase loan, the funds to purchase the home and pay closing costs are distributed at closing or shortly thereafter. In the case of a refinance loan, the funds from the new loan are used to pay off the old loan and, in some cases, to pay some or all of the closing costs, with any additional amount going to the borrower or to pay off other debts. Refinance loans also have closing costs, which may be paid by the borrower at closing or, in some cases, rolled into the loan amount. In home equity loans, the borrower's funds and the closing costs are provided upon closing. A settlement agent makes sure that all amounts are given to the appropriate parties. After the closing, the settlement agent records the deed at the local government registry.

B. RESPA and Regulation X

Congress enacted the Real Estate Settlement Procedures Act of 1974 based on findings that significant reforms in the real estate settlement process were needed to ensure that consumers are provided with greater and more timely information on the nature and costs of the residential real estate settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that Congress found to have developed. 12 U.S.C. 2601(a). With respect to RESPA's disclosure requirements, the Act's purpose is to provide "more effective advance disclosure to home buyers and sellers of settlement costs." 12 U.S.C.

2601(b)(1). In addition to providing consumers with appropriate disclosures, the purposes of RESPA include, but are not limited to, effecting certain changes in the settlement process for residential real estate that will result in (1) the elimination of kickbacks or referral fees that Congress found to increase unnecessarily the costs of certain settlement services; and (2) a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance. 12 U.S.C. 2601(b). In 1990, Congress amended RESPA by adding a new section 6 covering persons responsible for servicing mortgage loans and amending statutory provisions related to mortgage servicers' administration of borrowers' escrow accounts.[72]

RESPA's disclosure requirements generally apply to "settlement services" for "federally related mortgage loans." Under the statute, the term "settlement services" includes any service provided in connection with a real estate settlement. 12 U.S.C. 2602(3)(a). The term "federally related mortgage loan" is broadly defined to encompass virtually any purchase money or refinance loan, with the exception of temporary financing, that is "secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families…." 12 U.S.C. 2602(1).

Section 4 of RESPA requires that, in connection with a "mortgage loan transaction," a disclosure form that includes a "real estate settlement cost statement" be prepared and made available to the borrower for inspection at or before settlement.[73] 12 U.S.C. 2603. The law

[72] Pub. L. 101-625, 104 Stat. 4079 (1990), sections 941-42.
[73] Prior to the Dodd-Frank Act, section 4 of RESPA applied to "all transactions in the United States which involve federally related mortgage loans." 12 U.S.C. 2603 (2009). However, section 1098 of the Dodd-Frank Act deleted the reference to "federally related mortgage loan" in this section and replaced it with "mortgage loan transactions."

further requires that the form "conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement…." 12 U.S.C. 2603(a). Section 5 of RESPA provides for a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. 12 U.S.C. 2604(a). Further, each lender must "include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement…." 12 U.S.C. 2604(c). The booklet and the good faith estimate must be provided not later than three business days after the lender receives an application, unless the lender denies the application for credit before the end of the three-business day period. 12 U.S.C. 2604(d).

Historically, HUD's Regulation X, 24 CFR part 3500, has implemented RESPA. On March 14, 2008, after a 10-year investigatory process, HUD proposed extensive revisions to the good faith estimate and settlement forms required under Regulation X, as well as new accuracy standards with respect to the estimates provided to consumers. 73 FR 14030 (Mar. 14, 2008) (HUD's 2008 RESPA Proposal).[74] In November 2008, HUD finalized the proposed revisions in substantially the same form, including new standard good faith estimate and settlement forms, which lenders, mortgage brokers, and settlement agents were required to use beginning on January 1, 2010. 73 FR 68204 (Nov. 17, 2008) (HUD's 2008 RESPA Final Rule). HUD's 2008 RESPA Final Rule implemented significant changes to the rules regarding the accuracy of the estimates provided to consumers. The final rule required redisclosure of the good faith estimate

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The regulation implementing this statutory requirement has historically applied and continues to apply to "federally related mortgage loans." *See* 12 CFR 1024.8; 24 CFR 3500.8 (2010).

[74] During this 10-year period, in 2002, HUD published a proposed rule revising the good faith estimate forms and accuracy standards for cost estimates, which it never finalized. 67 FR 49134 (July 29, 2002).

form when the actual costs increased beyond a certain percentage of the estimated amounts, and permitted such increases only under certain specified circumstances. 73 FR 68240 (amending 24 CFR 3500.7). HUD's 2008 RESPA Final Rule also included significant changes to the RESPA disclosure requirements, including prohibiting itemization of certain amounts and instead requiring the disclosure of aggregate settlement costs; adding loan terms, such as whether there is a prepayment penalty and the borrower's interest rate and monthly payment; and requiring use of a standard form for the good faith estimate. *Id.* The standard form was developed through consumer testing conducted by HUD, which included qualitative testing consisting of one-on-one cognitive interviews.[75] HUD issued informal guidance regarding the final rule on its website, in the form of frequently asked questions[76] (HUD RESPA FAQs) and bulletins[77] (HUD RESPA Roundups).

The Dodd-Frank Act (discussed further in part I.D, below) transferred rulemaking authority for RESPA to the Bureau, effective July 21, 2011. *See* sections 1061 and 1098 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and RESPA, as amended, the Bureau published for public comment an interim final rule establishing a new Regulation X, 12 CFR part 1024, implementing RESPA. 76 FR 78978 (Dec. 20, 2011). This rule did not impose any new substantive obligations but did make certain technical, conforming, and stylistic changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. The Bureau's Regulation X took effect on December 30, 2011. RESPA section 5's requirements of

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[75] U.S. Dep't. of Hous. and Urban Dev., *Summary Report: Consumer Testing of the Good Faith Estimate Form (GFE)*, prepared by Kleimann Communication Group, Inc. (2008), available at http://www.huduser.org/publications/pdf/Summary_Report_GFE.pdf.
[76] *New RESPA Rule FAQs*, available at http://portal.hud.gov/hudportal/documents/huddoc?id=resparulefaqs422010.pdf.
[77] *RESPA Roundup Archive*, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res/resroundup.

an information booklet and good faith estimate of settlement costs (RESPA GFE) are implemented in Regulation X by §§ 1024.6 and 1024.7, respectively. RESPA section 4's requirement of a real estate settlement statement (RESPA settlement statement) is implemented by § 1024.8.

C. TILA and Regulation Z

Congress enacted the Truth in Lending Act based on findings that the informed use of credit resulting from consumers' awareness of the cost of credit would enhance economic stability and would strengthen competition among consumer credit providers. 15 U.S.C. 1601(a). One of the purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit. *Id.* TILA's disclosures differ depending on whether credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers.

TILA's disclosure requirements apply to a "consumer credit transaction" extended by a "creditor." Under the statute, consumer credit means "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment," where "the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes." 15 U.S.C. 1602(f), (i). A creditor generally is "a person who both (1) regularly extends . . . consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement." 15 U.S.C. 1602(g).

TILA section 128 requires that, for closed-end credit, the disclosures generally be made "before the credit is extended." 15 U.S.C. 1638(b)(1). For closed-end transactions secured by a consumer's dwelling and subject to RESPA, good faith estimates of the disclosures are required "not later than three business days after the creditor receives the consumer's written application, which shall be at least 7 business days before consummation of the transaction." 15 U.S.C. 1638(b)(2)(A). Finally, if the annual percentage rate (APR) disclosed in this early TILA disclosure statement becomes inaccurate, "the creditor shall furnish an additional, corrected statement to the borrower, not later than 3 business days before the date of consummation of the transaction." 15 U.S.C. 1638(b)(2)(D).

Historically, the Board's Regulation Z has implemented TILA. Effective July 21, 2011, the Dodd-Frank Act generally transferred rulemaking authority for TILA to the Bureau.[78] *See* Dodd-Frank Act sections 1061 and 1100A.

TILA section 128's requirement that the disclosure statement be provided before the credit is extended (final TILA disclosure) is implemented in the Bureau's Regulation Z by § 1026.17(b). The requirements that a good faith estimate of the disclosure be provided within three business days after application and at least seven business days prior to consummation (early TILA disclosure) and that a corrected disclosure be provided at least three business days before consummation (corrected TILA disclosure), as applicable, are implemented by § 1026.19(a). The contents of the TILA disclosures, as required by TILA section 128, are implemented by § 1026.18.

On July 30, 2008, Congress enacted the Mortgage Disclosure Improvement Act of 2008

[78] 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.

(MDIA).[79] MDIA, in part, amended the timing requirements for the early TILA disclosures, requiring that these TILA disclosures be provided within three business days after an application for a dwelling-secured closed-end mortgage loan also subject to RESPA is received and before the consumer has paid any fee (other than a fee for obtaining the consumer's credit history).[80] Creditors also must mail or deliver these early TILA disclosures at least seven business days before consummation and provide corrected disclosures if the disclosed APR changes in excess of a specified tolerance. The consumer must receive the corrected disclosures no later than three business days before consummation. The Board implemented these MDIA requirements in final rules published May 19, 2009, which became effective July 30, 2009, as required by the statute. 74 FR 23289 (May 19, 2009) (MDIA Final Rule).

MDIA also requires disclosure of payment examples if the loan's interest rate or payments can change, along with a statement that there is no guarantee the consumer will be able to refinance the transaction in the future. Under the statute, these provisions of MDIA became effective on January 30, 2011. The Board worked to implement these provisions of MDIA at the same time that it was completing work on a several year review of Regulation Z's provisions concerning home-secured credit. As a result, the Board issued two sets of proposals approximately one year apart. On August 26, 2009, the Board published proposed amendments to Regulation Z containing comprehensive changes to the disclosures for closed-end credit secured by real property or a consumer's dwelling, including revisions to the format and content

[79] MDIA is contained in sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008, Pub. L. 110-289, enacted on July 30, 2008. MDIA was later amended by the Emergency Economic Stabilization Act of 2008, Pub. L. 110-343, enacted on October 3, 2008.
[80] MDIA codified some requirements previously adopted by the Board in a July 2008 final rule. 73 FR 44522 (July 30, 2008) (HOEPA Final Rule). To ease discussion, the description of MDIA's disclosure requirements includes the requirements of the 2008 HOEPA Final Rule.

of the disclosures implementing MDIA's payment examples and refinance statement requirements, and several new requirements. 74 FR 43232 (Aug. 26, 2009) (2009 Closed-End Proposal).

For the 2009 Closed-End Proposal, the Board developed several new model disclosure forms through consumer testing consisting of focus groups and one-on-one cognitive interviews.[81] In addition, the 2009 Closed-End Proposal proposed an extensive revision to the definition of "finance charge" that would replace the "some fees in, some fees out" approach for determining the finance charge with a simpler, more inclusive "all-in" approach. The proposed definition of "finance charge" would include a fee or charge if it is (1) "payable directly or indirectly by the consumer" to whom credit is extended, and (2) "imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." The finance charge would continue to exclude fees or charges paid in comparable cash transactions.[82]

On September 24, 2010, the Board published an interim final rule to implement MDIA's payment example and refinance statement requirements. 75 FR 58470 (Sept. 24, 2010) (MDIA Interim Rule). The Board's MDIA Interim Rule effectively adopted those aspects of the 2009 Closed-End Proposal that implemented these MDIA requirements, without adopting that proposal's other provisions, which were not subject to the same January 30, 2011 statutory effective date. The Board later issued another interim final rule to make certain clarifying

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[81] Bd. of Governors of the Fed. Reserve Sys., *Summary of Findings: Design and Testing of Truth in Lending Disclosures for Closed-End Mortgages*, prepared by Macro International, Inc. (July 16, 2009) (Macro 2009 Closed-End Report), available at http://www.federalreserve.gov/boarddocs/meetings/2009/20090723/Full%20Macro%20CE%20Report.pdf.

[82] As discussed in the section-by-section analysis of the proposed amendments to § 1026.4 in part VI, in response to concerns about the effect of an "all-in" finance charge on the higher-priced and HOEPA coverage thresholds in §§ 1026.35 and 1026.32, respectively, the Board proposed to implement a different "transaction coverage rate" for higher-priced coverage and to retain the existing "some fees in, some fees out" treatment of certain charges in the definition of points and fees for purposes of determining HOEPA coverage. *See* 76 FR 27390, 27411-12 (May 11, 2011); 76 FR 11598, 11608-09 (Mar. 2, 2011); 75 FR 58539, 58636-38, 58660-61 (Sept. 24, 2010).

changes to the provisions of the MDIA Interim Rule. 75 FR 81836 (Dec. 29, 2010).

On September 24, 2010, the Board also proposed further amendments to Regulation Z regarding rescission rights, disclosure requirements in connection with modifications of existing mortgage loans, and disclosures and requirements for reverse mortgage loans. This proposal was the second stage of the comprehensive review conducted by the Board of TILA's rules for home-secured credit. 75 FR 58539 (Sept. 24, 2010) (2010 Mortgage Proposal).

The Board also began, on September 24, 2010, issuing proposals implementing the Dodd-Frank Act, which had been signed on July 21, 2010. The Board issued a proposed rule implementing section 1461 of the Dodd-Frank Act, which, in part, adjusts the rate threshold for determining whether escrow accounts are required for "jumbo loans," whose principal amounts exceed the maximum eligible for purchase by Freddie Mac.[83] 75 FR 58505 (Sept. 24, 2010). On March 2, 2011, the Board proposed amendments to Regulation Z implementing other requirements of sections 1461 and 1462 of the Dodd-Frank Act, which added new substantive and disclosure requirements regarding escrow accounts to TILA. 76 FR 11598 (March 2, 2011) (2011 Escrows Proposal). Sections 1461 and 1462 of the Dodd-Frank Act added section 129D to TILA, which substantially codifies requirements that the Board had previously adopted in Regulation Z regarding escrow requirements for higher-priced mortgage loans (including the revised rate threshold for "jumbo loans" described above), but also adds disclosure requirements, and lengthens the period for which escrow accounts are required.

On May 11, 2011, the Board proposed amendments to Regulation Z to implement section 1411 of the Dodd-Frank Act, which amends TILA to prohibit creditors from making mortgage loans without regard to the consumer's repayment ability. 76 FR 27390 (May 11, 2011) (2011

[83] The Board finalized this proposal effective April 1, 2011. 76 FR 11319 (Mar. 2, 2011).

ATR Proposal). Section 1411 of the Dodd-Frank Act adds section 129C to TILA, codified at 15 U.S.C. 1639c, which prohibits a creditor from making a mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan, including any mortgage-related obligations (such as property taxes).

As noted above, effective July 21, 2011, the Dodd-Frank Act generally transferred rulemaking authority for TILA to the Bureau. *See* Dodd-Frank Act sections 1061 and 1100A. Along with this authority, the Bureau assumed responsibility for the proposed rules discussed above. Pursuant to the Dodd-Frank Act and TILA, as amended, the Bureau published for public comment an interim final rule establishing a new Regulation Z, 12 CFR part 1026, implementing TILA (except with respect to persons excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act). 76 FR 79768 (Dec. 22, 2011). This rule did not impose any new substantive obligations but did make certain technical, conforming, and stylistic changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. The Bureau's Regulation Z took effect on December 30, 2011.

D. The History of Integration Efforts

For more than 30 years, TILA and RESPA have required creditors and settlement agents to give consumers who apply for and obtain a mortgage loan different but overlapping disclosure forms regarding the loan's terms and costs. This duplication has long been recognized as inefficient and confusing for both consumers and industry.

Previous efforts to develop a combined TILA and RESPA disclosure form were fueled by the amount, complexity, and overlap of information in the disclosures. On September 30, 1996, Congress enacted the Economic Growth and Regulatory Paperwork Reduction Act of 1996,[84] which required the Board and HUD to "simplify and improve the disclosures applicable to the transactions under [TILA and RESPA], including the timing of the disclosures; and to provide a single format for such disclosures which will satisfy the requirements of each such Act with respect to such transactions."[85] If the agencies found that legislative action might be necessary or appropriate to simplify and unify the disclosures, they were to submit a report to Congress containing recommendations for such action. In the same legislation, Congress added exemption authority in TILA section 105(f) for classes of transactions for which, in the determination of the Board (now the Bureau), coverage under all or part of TILA does not provide a meaningful benefit to consumers in the form of useful information or protection.[86]

The Board and HUD did not propose an integrated disclosure pursuant to this legislation. Instead, in July 1998, the Board and HUD issued a "Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act" (Board-HUD Joint Report).[87] The Board-HUD Joint Report concluded that "meaningful change could come only through legislation" and provided Congress with the Board's and HUD's recommendations for revising TILA and RESPA.

The agencies recommended a number of amendments to TILA and RESPA in the report, such as amendment of TILA's definition of "finance charge" to eliminate the "some fees in, some fees out" approach and instead include "all costs the consumer is required to pay in order

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[84] Public Law 104-208, 110 Stat. 3009 (1996).
[85] *Id.*, section 2101.
[86] *Id.*, section 2102(b).
[87] Bd. of Governors of the Fed. Reserve Sys. And U.S. Dep't of Hous. and Urban Dev., *Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act* (1998), available at http://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf.

to close the loan, with limited exceptions"; the amendment of RESPA to require either the guaranteeing of closing costs on the GFE or estimates that are subject to an accuracy standard; and provision of the final TILA disclosure and settlement statement three days before closing, so that consumers would be able to study the disclosures in an unpressured environment.

The Board-HUD Joint Report also recommended several additional changes to the TILA disclosures. In particular, the report recommended significant revisions to the "Fed Box," which is the tabular disclosure provided to consumers in the early and final TILA disclosures under Regulation Z containing the APR, the finance charge (which is intended to be the cost of credit expressed as a dollar amount), the amount financed (which is intended to reflect the loan proceeds available to the consumer), and the total of payments (which is the dollar amount of the transaction over the loan term, including principal and finance charges).[88] The report recommended, among other things, eliminating the amount financed from the disclosure for mortgage loans because it probably was not useful to consumers in understanding mortgage loans. The report also recommended adding disclosure of the total closing costs in the Fed Box, citing focus groups conducted by the Board in which participants stated that disclosure of the amount needed to close the loan would be useful.

The Board-HUD Joint Report did not result in legislative action. Eleven years later, and four months before the revised RESPA disclosures under HUD's 2008 RESPA Final Rule were to become mandatory, the Board published the 2009 Closed-End Proposal, which proposed significant revisions to the TILA disclosures and stated that the Board would work with HUD towards integrating the two disclosure regimes. The proposal stated that "the Board anticipates working with [HUD] to ensure that TILA and [RESPA] disclosures are compatible and

[88] *See, e.g.*, Regulation Z, 12 CFR part 1026 app. H-2 Loan Model Form.

complementary, including potentially developing a single disclosure form that creditors could use to combine the initial disclosures required under TILA and RESPA."[89] The proposal stated that consumer testing would be used to ensure consumers could understand and use the combined disclosures. However, only ten months later in July 2010, the Dodd-Frank Act was enacted by Congress, which transferred rulemaking authority under both TILA and RESPA to the Bureau and, as described below in part II.E, under sections 1032(f), 1098, and 1100A, mandated that the Bureau establish a single disclosure scheme under TILA and RESPA and propose for public comment rules and model disclosures that integrate the TILA and RESPA disclosures by July 21, 2012. 12 U.S.C. 2603(a), 5532(f); 15 U.S.C. 1604(b).

The Bureau issued proposed integrated disclosure forms and rules for public comment on July 9, 2012 (the TILA-RESPA Proposal or proposal).[90] The TILA-RESPA Proposal provided for a bifurcated comment process. Comments regarding the proposed amendments to § 1026.1(c) were required to have been received on or before September 7, 2012. For all other proposed amendments and comments pursuant to the Paperwork Reduction Act, comments were required to have been received on or before November 6, 2012.[91] Now, more than 17 years after Congress first directed the Board and HUD to integrate the disclosures under TILA and RESPA,

[89] 74 FR 43232, 43233.

[90] *See* the Bureau's press release *Consumer Financial Protection Bureau proposes "Know Before You Owe" mortgage forms* (July 9, 2012), available at http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-proposes-know-before-you-owe-mortgage-forms/; the Bureau's blog post *Know Before You Owe: Introducing our proposed mortgage disclosure forms* (July 9, 2012), available at http://www.consumerfinance.gov/blog/know-before-you-owe-introducing-our-proposed-mortgage-disclosure-forms/.

[91] In its initial *Federal Register* notice, the Bureau also applied the September 7, 2012 deadline to comments on the proposed amendments to the definition of finance charge in § 1026.4. On August 31, 2012, however, the Bureau issued a notice extending the deadline for such comments to November 6, 2012. *See* the Bureau's blog post, *More time for comments on proposed changes to the definition of the finance charge* (Aug. 31, 2012), available at http://www.consumerfinance.gov/blog/more-time-for-comments-on-proposed-changes-to-the-definition-of-the-finance-charge/. The extension was published in the *Federal Register* on September 6, 2012. *See* 77 FR 54843 (Sept. 6, 2012). It did not change the comment period for any other aspects of the TILA-RESPA Proposal, which, as noted above, closed on November 6, 2012.

the Bureau publishes this final rule.

E. The Dodd-Frank Act

As noted above, RESPA and TILA historically have been implemented by regulations of HUD and the Board, respectively, and the Dodd-Frank Act consolidated most of this rulemaking authority in the Bureau. In addition, the Dodd-Frank Act amended both statutes to mandate that the Bureau establish a single disclosure scheme for use by lenders or creditors in complying comprehensively with the disclosure requirements discussed above. Section 1098(2) of the Dodd-Frank Act amended RESPA section 4(a) to require that the Bureau "publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of [TILA] that, taken together, may apply to a transaction that is subject to both or either provisions of law." 12 U.S.C. 2603(a). Similarly, section 1100A(5) of the Dodd-Frank Act amended TILA section 105(b) to require that the Bureau "publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of [RESPA] that, taken together, may apply to a transaction that is subject to both or either provisions of law." 15 U.S.C. 1604(b).

The amendments to RESPA and TILA mandating a "single, integrated disclosure" are among numerous conforming amendments to existing Federal laws found in subtitle H of the Consumer Financial Protection Act of 2010.[92] Subtitle C of the Consumer Financial Protection

[92] The Consumer Financial Protection Act is title X, "Bureau of Consumer Financial Protection," of the Dodd-Frank Act, Pub. L. 111-203,124 Stat. 1376 (2010), sections 1001-1100H. In the Consumer Financial Protection Act, Congress established the Bureau and its powers and authorities, transferred to the Bureau various existing functions of other agencies, mandated certain regulatory improvements, and prescribed other requirements and conforming

Act, “Specific Bureau Authorities,” codified at 12 U.S.C. chapter 53, subchapter V, part C, contains a similar provision. Specifically, section 1032(f) of the Dodd-Frank Act provides that, by July 21, 2012, the Bureau “shall propose for public comment rules and model disclosures that combine the disclosures required under [TILA] and sections 4 and 5 of [RESPA] into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the [Board] and [HUD] carries out the same purpose.” 12 U.S.C. 5532(f). The Bureau issued the TILA-RESPA Proposal pursuant to that mandate and the parallel mandates established by the conforming amendments to RESPA and TILA, discussed above.

F. Other Rulemakings

In January 2013, the Bureau issued several other rulemakings relating to mortgage credit to implement requirements of the Dodd-Frank Act (the Title XIV Rulemakings), and throughout 2013 has issued proposed and final rules to amend the rulemakings based on public feedback:

HOEPA: On January 10, 2013, the Bureau issued a final rule implementing certain Dodd-Frank Act requirements that expand protections for “high-cost” mortgage loans under HOEPA, pursuant to TILA sections 103(bb) and 129, as amended by Dodd-Frank Act sections 1431 through 1433 (2013 HOEPA Final Rule).[93] 15 U.S.C. 1602(bb) and 1639. The rule implements certain Title XIV requirements concerning homeownership counseling, including a requirement that lenders provide lists of homeownership counselors to applicants for federally

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amendments. Subtitle H, “Conforming Amendments,” is the last subtitle and consists of sections 1081-1100H. Certain titles of the Dodd-Frank Act are codified at 12 U.S.C. chapter 53. Subtitles A through G (but not H) of title X are codified at 12 U.S.C. chapter 53, subchapter V, parts A through G. Thus, the Consumer Financial Protection Act is substantially codified at 12 U.S.C. 5481-5603.

[93] 78 FR 6855 (Jan. 31, 2013), finalizing a proposal issued on July 9, 2012 (77 FR 54844 (Aug. 15, 2012) (2012 HOEPA Proposal)).

related mortgage loans, pursuant to RESPA section 5(c), as amended by Dodd-Frank Act section 1450. 12 U.S.C. 2604(c). On November 8, 2013, the Bureau issued a final interpretive rule providing lenders with additional instructions on complying with the 2013 HOEPA Final Rule requirements.[94]

Servicing: 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 (2013 Mortgage Servicing Final Rules).[95] These rules implement Dodd-Frank Act requirements regarding force-placed insurance, error resolution, information requests, and payment crediting, as well as requirements for mortgage loan periodic statements and adjustable rate mortgage reset disclosures, pursuant to sections 6 of RESPA and 128, 128A, 129F, and 129G of TILA, as amended or established by Dodd-Frank Act sections 1418, 1420, 1463, and 1464. 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, and 1639g. These rules establish: (1) early intervention for troubled and delinquent borrowers, and loss mitigation procedures, pursuant to the Bureau's authority under section 6 of RESPA, as amended by Dodd-Frank Act section 1463; (2) obligations for mortgage servicers that the Bureau found to be appropriate to carry out the consumer protection purposes of RESPA, as well as its authority under section 19(a) of RESPA to prescribe rules necessary to achieve the purposes of RESPA; and (3) requirements for general servicing standards, policies, and procedures and continuity of contact, pursuant to the Bureau's

[94] Homeownership Counseling Organizations Lists Interpretive Rule (Nov. 8, 2013), available at http://files.consumerfinance.gov/f/201311_cfpb_interpretive-rule_homeownership-counseling-organizations-lists.pdf; *see also* Homeownership Counseling list requirements, CFPB Bulletin 2013-13 (Nov. 8, 2013), available at http://files.consumerfinance.gov/f/201311_cfpb_bulletin_homeownership-counseling-list-requirements.pdf.

[95] 78 FR 10901 (Feb. 14, 2013), amending Regulation Z (2013 TILA Mortgage Servicing Final Rule), and 78 FR 10695 (Feb. 14, 2013), amending Regulation X (2013 RESPA Mortgage Servicing Final Rule). These rules finalized proposals issued on August 20, 2012 (77 FR 57317 (Sept. 17, 2012), proposing amendments to Regulation Z (2012 TILA Mortgage Servicing Proposal) and 77 FR 57200 (Sept. 17, 2012), proposing amendments to Regulation X (2012 RESPA Mortgage Servicing Proposal)).

authority under section 19(a) of RESPA.

Loan Originator Compensation: On January 20, 2013, the Bureau issued a final rule to implement provisions of the Dodd-Frank Act requiring certain creditors and loan originators to meet certain duties of care, pursuant to TILA sections 129B and 129C as established by Dodd-Frank Act sections 1402, 1403, and 1414(a) (2013 Loan Originator Final Rule).[96] 15 U.S.C. 1639b, 1639c. The rule sets forth certain qualification requirements; requires the establishment of certain compliance procedures by depository institutions; prohibits loan originators, creditors, and their affiliates from receiving compensation in various forms and from sources other than the consumer (with specified exceptions); and establishes restrictions on mandatory arbitration and the financing of single-premium credit insurance. On May 29, 2013, the Bureau issued a final rule delaying the effective date of a prohibition on creditors financing credit insurance premiums in connection with certain consumer credit transactions secured by a dwelling from its original effective date of June 1, 2013 to January 10, 2014.[97] The delay is meant to permit the Bureau to clarify the provision's applicability to transactions other than those in which a lump-sum premium is added to the loan amount at closing.

Appraisals: On January 18, 2013, the Bureau, jointly with Federal prudential regulators and other Federal agencies (the Agencies), issued a final rule to implement Dodd-Frank Act requirements concerning appraisals for higher-risk mortgages, pursuant to TILA section 129H as established by Dodd-Frank Act section 1471 (2013 Interagency Appraisals Final Rule).[98] 15

[96] 78 FR 11279 (Feb. 15, 2013), finalizing a proposal issued on August 17, 2012 (77 FR 55271 (Sept. 7, 2012) (2012 Loan Originator Proposal)).
[97] 78 FR 32547 (May 31, 2013), finalizing a proposal to delay the effective date of the prohibition issued May 7, 2013 (78 FR 27308 (May 10, 2013)).
[98] 78 FR 10637 (Feb. 13, 2013), finalizing a proposal issued on September 5, 2012 (77 FR 54721 (Sept. 9, 2012) (2012 Interagency Appraisals Proposal)).

U.S.C. 1639h. For mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the final rule requires creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. On July 10, 2013, the Agencies issued a proposal to amend the final rule to provide exemptions for: (1) transactions secured by existing manufactured homes and not land; (2) certain "streamlined" refinancings; and (3) transactions of $25,000 or less.[99]

On the same day it issued the 2013 Interagency Appraisal Final Rule, the Bureau issued a final rule to implement section 701(e) of the Equal Credit Opportunity Act (ECOA), as amended by Dodd-Frank Act section 1474 (2013 ECOA Appraisals Final Rule). 15 U.S.C. 1691(e). That rule requires that creditors provide applicants with a free copy of written appraisals and valuations developed in connection with applications for loans secured by a first lien on a dwelling and notify applicants in writing that copies of appraisals will be provided to them promptly.

Ability to Repay: On January 10, 2013, the Bureau finalized a proposal issued by the Board to implement provisions of the Dodd-Frank Act (1) requiring creditors to determine that a consumer has a reasonable ability to repay covered mortgage loans and establishing standards for compliance, and (2) establishing certain limitations on prepayment penalties, pursuant to TILA sections 129C as established by Dodd-Frank Act sections 1411, 1412, and 1414 (2013 ATR Final Rule).[100] 15 U.S.C. 1639c. Concurrent with the issuance of the 2013 ATR Final Rule, the Bureau issued a concurrent proposed rule amending certain aspects of the 2013 ATR Final Rule

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[99] 78 FR 48548 (Aug. 8, 2013).
[100] 78 FR 6407 (Jan. 30, 2013), finalizing a proposal issued by the Board on May 11, 2011 (76 FR 27389 (May 11, 2011) (2011 Board Ability to Repay Proposal)).

(2013 ATR Concurrent Proposal), which proposal was finalized on May 29, 2013 (May 2013 ATR Final Rule).[101] That rule provides exemptions for certain nonprofit creditors and certain homeownership stabilization programs, provides an additional definition of a "qualified mortgage" for certain loans made and held in portfolio by small creditors, and modifies the requirements regarding the inclusion of loan originator compensation in the points and fees calculation.

Escrows: On January 10, 2013, the Bureau finalized a proposal issued by the Board to implement provisions of the Dodd-Frank Act that require escrow accounts to be established for higher-priced mortgage loans and to create an exemption for certain loans held by creditors operating predominantly in rural or underserved areas, pursuant to TILA section 129D as established by Dodd-Frank Act section 1461 (2013 Escrows Final Rule).[102] 15 U.S.C. 1639d. On April 18, 2013, the Bureau published a proposal setting forth certain clarifying and technical amendments to the 2013 Escrows Final Rule, including a clarification of how to determine whether a county is considered "rural" or "underserved."[103] The final rule was published on May 23, 2013.[104]

In addition to the foregoing, the Bureau proposed and finalized three additional sets of amendments to the Title XIV Rulemakings. The first set of amendments, proposed in April 2013 and published on July 24, 2013, clarify, correct, or amend provisions on the relation to State law of Regulation X's servicing provisions; implementation dates for adjustable rate mortgage

[101] 78 FR 35429 (Jun. 12, 2013), finalizing the concurrent proposal issued on January 10, 2013 (78 FR 6622 (Jan. 30, 2013)).
[102] 78 FR 4726 (Jan. 22, 2013), finalizing a proposal issued by the Board on March 2, 2011 (76 FR 11597 (Mar. 2, 2011)).
[103] 78 FR 23171 (Apr. 18, 2013).
[104] 78 FR 30739 (May 23, 2013).

servicing; exclusions from requirements on higher-priced mortgage loans; the small servicer exemption from certain servicing rules; the use of government-sponsored enterprise and Federal agency purchase, guarantee or insurance eligibility for determining qualified mortgage status; and the determination of debt and income for purposes of originating qualified mortgages.[105]

The second set of amendments, proposed on June 21, 2013, was published on October 1, 2013.[106] These amendments focus primarily on clarifying, revising, or amending provisions 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 amendments also adjusted the effective dates for certain provisions of the loan originator compensation rules, and incorporated technical and wording changes for clarification purposes to Regulations B, X, and Z.

The third set of amendments was published on October 23, 2013.[107] These amendments focus primarily on clarifying the specific disclosures that must be provided before counseling for high-cost mortgages can occur, and proper compliance regarding servicing requirements when a consumer is in bankruptcy or sends a cease communication request under the Fair Debt Collection Practices Act. The rule also makes technical corrections to provisions of the other

[105] 78 FR 44685 (July 24, 2013), finalizing a proposal issued on April 19, 2013 (78 FR 25638 (May 2, 2013)).
[106] 78 FR 60382 (Oct. 1, 2013); 78 FR 39902 (Jul. 2, 2013).
[107] 78 FR 62993 (Oct. 23, 2013).

Title XIV Rulemakings.

The Bureau regards the foregoing rulemakings as components of a larger undertaking; many of them intersect with one or more of the others. Accordingly, the Bureau has carefully coordinated the development and implementation of the proposals and final rules identified above in an effort to facilitate compliance. As an example, in developing the TILA-RESPA Proposal and Final Rule, the Bureau took care to ensure common terms, such as "prepayment penalty" and "balloon payment" are defined consistent with the Title XIV Rulemakings, as described in more detail below. In addition, each rulemaking includes regulatory provisions to implement the various Dodd-Frank Act mandates and to ensure that the overall undertaking is accomplished efficiently and that it ultimately yields a regulatory scheme for mortgage credit that achieves the statutory purposes set forth by Congress, while avoiding unnecessary burdens on industry.

III. Summary of the Rulemaking Process

As noted above, the Dodd-Frank Act established two goals for this rulemaking: "to facilitate compliance with the disclosure requirements of [TILA and RESPA]" and "to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures." Dodd-Frank Act sections 1098, 1100A; 12 U.S.C. 2603(a), 15 U.S.C. 1604(b). Further, the Bureau has a specific mandate and authority from Congress to promote consumer comprehension of financial transactions through clear disclosures. Section 1021(a) of the Dodd-Frank Act directs the Bureau to "implement…Federal consumer financial law consistently for the purpose of ensuring," inter alia, that "markets for consumer financial products and services are fair, transparent, and competitive." 12 U.S.C. 5511(a). Section 1021(b) of the Dodd-Frank Act, in turn, authorizes the Bureau as part of its core mission to exercise its authority to ensure that, with respect to consumer financial products and services, "consumers are provided with timely and understandable information to make responsible decisions about financial transactions." 12 U.S.C. 5511(b). Consistent with these goals and in preparation for proposing integrated rules and forms, the Bureau conducted a multifaceted information gathering campaign, including researching how consumers interact with and understand information, testing of prototype forms, developing interactive online tools to gather public feedback, and hosting roundtable discussions, teleconferences, and meetings with consumer advocacy groups, industry stakeholders, and other government agencies.

A. Early Stakeholder Outreach & Prototype Form Design

In September 2010, the Bureau began meeting with consumer advocates, other banking agencies, community banks, credit unions, settlement agents, and other industry representatives. This outreach helped the Bureau better understand the issues that consumers and industry face when they use the current TILA and RESPA disclosures. For example, as part of this outreach, in December 2010, the Bureau held a mortgage disclosure symposium that brought together consumer advocacy groups, industry representatives, marketing professionals, designers, and other interested parties to discuss various possible concepts and approaches for integrating the disclosures.

At the same time, the Bureau began to research how consumers interact with and understand information. Given the complexities and variability of mortgage loan transactions and their underlying real estate transactions, the Bureau understood that the integrated disclosures would have to convey a large amount of complex and technical information to consumers in a manner that they could use and understand. Considering that, in January 2011, the Bureau contracted with a communication, design, consumer testing, and research firm, Kleimann Communication Group, Inc. (Kleimann), which specializes in consumer financial disclosures. Kleimann has been hired by other Federal agencies to perform similar design and qualitative testing work in connection with other financial disclosure forms. For example, the Federal Trade Commission and the Federal banking agencies contracted with Kleimann to design and conduct consumer testing for revised model privacy disclosures.[108] Also, HUD contracted with Kleimann to assist in the design and consumer testing for its revised RESPA GFE and RESPA settlement statement forms.[109]

The Bureau and Kleimann reviewed relevant research and the work of other Federal financial services regulatory agencies to inform the Bureau's design of the prototype integrated disclosures. One of the findings of this research was that there is a significant risk to consumers of experiencing "information overload" when the volume or complexity of information detracts from the consumer decision-making processes. "Information overload" has often been cited as a problem with financial disclosures.[110] Researchers suggest that there should be a balance between the types and amount of information in the disclosures, because too much information has the potential to detract from consumers' decision-making processes.[111] In its 2009 Closed-End Proposal, the Board cited a reduction in "information overload" as one of the potential

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[108] 72 FR 14940, 14944 (Mar. 29, 2007); 74 FR 62890, 62893 (Dec. 1, 2009).
[109] 73 FR 14030, 14043 (Mar. 14, 2008); 73 FR 68204, 68265 (Nov. 17, 2008).
[110] *See e.g.*, Debra Pogrund Stark and Jessica M. Choplin, *A Cognitive and Social Psychological Analysis of Disclosure Laws and Call for Mortgage Counseling to Prevent Predatory Lending*, 16 Psych. Pub. Pol. and L. 85, 96 (2010); Paula J. Dalley, *The Use and Misuse of Disclosure as a Regulatory System*, 34 Fla. St. U.L. Rev. 1089, 1115 (2007); Patricia A. McCoy, *The Middle-Class Crunch: Rethinking Disclosure in a World of Risk-Based Pricing*, 44 Harv. J. on Legis. 123, 133 (2007); Lauren E. Willis, *Decisionmaking and The Limits of Disclosure: The Problem of Predatory Lending: Price*, 65 Md. L. Rev. 707, 766 (2006); Troy A. Paredes, *After the Sarbanes-Oxley Act: The Future Disclosure System: Blinded by the Light: Information Overload and its Consequences for Securities Regulation*, 81 Wash. U. L. Q. 417 (2003); William N. Eskridge, Jr., *One Hundred Years of Ineptitude: The Need for Mortgage Rules Consonant with the Economic and Psychological Dynamics of the Home Sale and Loan Transaction*, 70 Va. L. Rev. 1083, 1133 (1984).
[111] John Kozup & Jeanne M. Hogarth, *Financial Literacy, Public Policy, and Consumers' Self-Protection-More Questions, Fewer Answers*, 42 Journal of Consumer Affairs 2, 127 (2008).

benefits of its plan to harmonize the TILA and RESPA disclosures in collaboration with HUD.[112] The Board's consumer testing in connection with its 2009 Closed-End Proposal found that when participants were asked what was most difficult about their mortgage experience, the most frequent answer was the amount of paperwork.[113] HUD also stated that one of its guiding principles for HUD's 2008 RESPA Proposal was that "the [mortgage loan settlement process] can be improved with simplification of disclosures and better borrower information," the complexity of which caused many problems with the process.[114]

The potential for "information overload" was also cited by Congress as one of the reasons it amended the TILA disclosures in the Truth-in-Lending Simplification and Reform Act of 1980.[115] According to the Senate Committee on Banking, Housing and Urban Affairs, this legislation arose in part because:

> During its hearings the Consumer Affairs Subcommittee heard testimony from a leading psychologist who has studied the problem of 'informational overload.' The Subcommittee learned that judging from consumer tests in other areas, the typical disclosure statement utilized today by creditors is not an effective communication device. Most disclosure statements are lengthy, written in legalistic fine print, and have essential Truth in Lending disclosures scattered among various contractual terms. The result is a piece of paper which appears to be 'just another legal document' instead of the simple, concise disclosure form

[112] 74 FR 43232, 43234.
[113] *See* Macro 2009 Closed-End Report at 19. For additional discussion regarding information overload, see the section-by-section analysis of proposed § 1026.37(l).
[114] 73 FR 14030, 14031.
[115] Pub. L. 96-221, 94 Stat 132 (1980).

Congress intended.[116]

Based on this research, the Bureau is particularly mindful of the risk of information overload, especially considering the large volume of other information and paperwork consumers are required to process throughout the mortgage loan and real estate transaction.

The Bureau began development of the integrated disclosures with certain design objectives. Considering that the quantity of information both on the disclosures and in other paperwork throughout the mortgage loan and real estate transaction may increase the risk of information overload, the Bureau began development of the integrated disclosures with the objective of creating a graphic design that used as few words as possible when presenting the key loan and cost information. The Bureau's purpose for such a design was to make the information readily visible so that consumers could quickly and easily find the information they were seeking, without being confronted with large amounts of text. Accordingly, the Bureau decided to limit the content of the disclosures to loan terms, cost information, and certain textual disclosures and to exclude educational material. The Bureau understood that consumers would receive educational materials required under applicable law, such as the Special Information Booklet required by section 5 of RESPA, through other means. In addition, the Bureau anticipated that it would provide additional educational information and tools on its website and place a website link on the integrated disclosures directing consumers to that site, which would obviate the need to place educational material directly on the disclosures.

The Bureau believed and continues to believe that the design should highlight on the first page the most important loan information that consumers readily understand and use to evaluate

[116] Pub. L. 96-221, Depository Institutions Deregulation and Monetary Control Act of 1980, Senate Report No. 96073 (Apr. 24, 1979).

and compare loans, placing more detailed and technical information later in the disclosure. With such a design, the first page could potentially be used by some consumers as a one-page mortgage shopping sheet. In addition, the Bureau believed the design should use plain language and limit the use of technical, statutory, or complex financial terms wherever possible.

The Bureau believes these design objectives best satisfy the purposes of the integrated disclosures set forth by Dodd-Frank Act sections 1098 and 1100A, as well as the Bureau's mandate under Dodd-Frank Act section 1021(b) to ensure that consumers are provided with "understandable information" to enable them to make responsible decisions about financial transactions.

From January through May 2011, the Bureau and Kleimann developed a plan to design integrated disclosure prototypes and conduct qualitative usability testing, consisting of one-on-one cognitive interviews. The Bureau and Kleimann worked collaboratively on developing the qualitative testing plan and several prototype forms for the disclosure to be provided in connection with a consumer's application integrating the RESPA GFE and the early TILA disclosure (the Loan Estimate). The Bureau planned to develop the disclosure provided in connection with the closing of the mortgage loan that integrates the RESPA settlement statement and the final TILA disclosure (the Closing Disclosure) after development and testing of the prototype design for the Loan Estimate. Although qualitative testing is commonly used by Federal agencies to evaluate the effectiveness of disclosures prior to issuing a proposal, the qualitative testing plan developed by the Bureau and Kleimann was unique in that the Bureau conducted qualitative testing with industry participants as well as consumers. Each round of qualitative testing included at least two industry participants, including lenders from several different types of depository institutions (including credit unions and community banks) and non-depository institutions (mortgage companies and mortgage brokers) and, for the Closing Disclosure, settlement agents.

B. Pre-Proposal Prototype Testing and the Know Before You Owe (KBYO) Project

In May 2011, the Bureau selected two initial prototype designs of the Loan Estimate, which were used in qualitative testing interviews in Baltimore, Maryland. In these interviews, consumers were asked to work through the prototype forms while conveying their impressions, and were also asked a series of questions designed to assess whether the forms presented information in a format that enabled them to understand and compare the mortgage loans presented to them. These questions ranged from the highly specific (*e.g.*, asking whether the consumer could identify the loan payment in year 10 of a 30-year, adjustable rate loan) to the highly general (*e.g.*, asking consumers to choose the loan that best met their needs).[117] Industry participants were asked to use the prototype forms to explain mortgage loans as they would to a consumer and to identify implementation issues and areas for improvement.

At the same time, to supplement its qualitative testing, the Bureau launched an initiative, which it titled "Know Before You Owe," to obtain additional public feedback on the prototype disclosure forms.[118] The Bureau believed this would provide an opportunity to obtain a large amount of feedback from a broad base of consumers and industry respondents around the country. This initiative consisted of either publishing and obtaining feedback on the prototype designs through an interactive tool on the Bureau's website or posting the prototypes to the Bureau's blog on its website and providing an opportunity for the public to email feedback

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[117] The consumers who participated in these interviews had varying levels of education (from consumers with less than a high school education to consumers with graduate degrees) and varying levels of experience with the home buying and mortgage loan process (from consumers who never owned a home to consumers who had been through the home buying and mortgage loan process before).

[118] *See* http://www.consumerfinance.gov/knowbeforeyouowe/.

directly to the Bureau. Individual consumers, loan officers, mortgage brokers, settlement agents, and others provided feedback based on their own experiences with the mortgage loan process by commenting on specific sections of the form, prioritizing information presented on the form, and/or identifying additional information that should be included.[119]

From May to October 2011, Kleimann and the Bureau conducted a series of five rounds of qualitative testing of different iterations of the Loan Estimate with consumer and industry participants. In addition to Baltimore, Maryland, this testing was conducted in Los Angeles, California; Chicago, Illinois; Springfield, Massachusetts; and Albuquerque, New Mexico. Each round focused on a different aspect of the integrated disclosure, such as the overall design, the disclosure of closing costs, and the disclosure of loan payments over the term of the loan. The overall goal of this qualitative testing was to ensure that the forms enabled consumers to understand and compare the terms and costs of the loan.

After each round of testing, Kleimann analyzed and reported to the Bureau on the results of the testing. Based on these results and the supplemental feedback received through the KBYO process, the Bureau would revise the prototype disclosure forms for the subsequent rounds of testing. This iterative process helped the Bureau develop forms that better enable consumers to understand and compare mortgage loans and assist industry in complying with the law. For a detailed discussion of this testing, see the report prepared by Kleimann, *Know Before You Owe: Evolution of the Integrated TILA-RESPA Disclosures* (Kleimann Testing Report), which the Bureau posted on its website and on Regulations.gov in connection with the TILA-RESPA

[119] Examples of consumer and industry responses to the prototypes of the disclosures can be seen in the CFPB blog, including at: www.consumerfinance.gov/know-before-you-owe-go; www.consumerfinance.gov/13000-lessons-learned; and www.consumerfinance.gov/know-before-you-owe-its-closing-time.

Proposal.[120]

After completion of the qualitative testing that focused solely on the Loan Estimate, the Bureau and Kleimann began work on the prototype designs for the Closing Disclosure. From November 2011 through March 2012, the Bureau and Kleimann conducted five rounds of qualitative testing of different iterations of the Closing Disclosure with consumer and industry participants. This testing was conducted in five different cities across the country: Des Moines, Iowa; Birmingham, Alabama; Philadelphia, Pennsylvania; Austin, Texas; and Baltimore, Maryland.

Similar to the qualitative testing of the Loan Estimate, the Bureau revised the prototype Closing Disclosure forms after each round based on the results Kleimann provided to the Bureau and the supplemental feedback received from the KBYO process. The Bureau focused on several aspects of the prototypes during each round, such as the settlement disclosures adapted from the HUD-1, new disclosure items required under title XIV of the Dodd-Frank Act, and tables to help identify changes in the information disclosed in the initial Loan Estimate. The overall goal of the qualitative testing of the Closing Disclosure was to ensure that the forms enabled consumers to understand their actual terms and costs, and to compare the Closing Disclosure with the Loan Estimate to identify changes. Accordingly, several rounds included testing of different iterations of the Loan Estimate with the Closing Disclosure.

Overall, the Bureau performed qualitative testing with 92 consumer participants and 22 industry participants, for a total of 114 participants. In addition, through the Bureau's KBYO initiative, the Bureau received over 150,000 visits to the KBYO website and over 27,000 public

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[120] Kleimann Communication Group, Inc., *Know Before You Owe: Evolution of the Integrated TILA-RESPA Disclosures* (July 2012), available at http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf.

comments and emails about the prototype disclosures.

C. Proposal Stakeholder Outreach

While developing the proposed forms and rules to integrate the disclosures, and throughout its qualitative testing of the prototype disclosure forms, the Bureau continued to conduct extensive outreach to consumer advocacy groups, other regulatory agencies, and industry representatives and trade associations. The Bureau held meetings with individual stakeholders upon request, and also invited stakeholders to meetings in which individual views of each stakeholder could be heard. The Bureau conducted these meetings with a wide range of stakeholders that may be affected by the integrated disclosures, even if not directly regulated by the final rule. The meetings included community banks, credit unions, thrifts, mortgage companies, mortgage brokers, settlement agents, settlement service providers, software providers, appraisers, not-for-profit consumer and housing groups, and government and quasi-governmental agencies. Many of the persons attending these meetings represented small business entities from different parts of the country. In addition to these meetings, after each round of qualitative testing, in response to the Bureau's posting of the prototype integrated disclosures on the KBYO website, the Bureau received numerous letters from individuals, consumer advocates, financial services providers, and trade associations, which provided the Bureau with additional feedback on the prototype disclosure forms.

In preparing the TILA-RESPA Proposal, the Bureau also considered comments provided in response to its December 2011 request for information regarding streamlining of regulations for which rulemaking authority was inherited by the CFPB from other Federal agencies, including TILA and RESPA. 76 FR 75825 (Dec. 5, 2011) (2011 Streamlining RFI). That request for information specifically sought public comment on provisions of the inherited regulations that the Bureau should make the highest priority for updating, modifying, or eliminating because they are outdated, unduly burdensome, or unnecessary, and sought suggestions for practical measures to make compliance with the regulations easier. Several commenters requested that the Bureau reconcile inconsistencies in the terminology and requirements of Regulations X and Z. Wherever possible, the Bureau proposed to do so in the TILA-RESPA Proposal. In addition, other relevant comments received in response to the 2011 Streamlining RFI were addressed in the TILA-RESPA Proposal and are addressed below.

D. Small Business Review Panel

In February 2012, the Bureau convened a Small Business Review Panel with the Chief Counsel for Advocacy of the Small Business Administration (SBA) and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).[121] As part of this process, the Bureau prepared an outline of the proposals then under consideration and the alternatives considered (Small Business Review Panel Outline), which it posted on its website for review by the general public as well as the small entities participating in the panel process.[122] The Small Business Review Panel gathered information from representatives of small lenders, mortgage brokers, settlement agents, and not-for-profit organizations and made findings and recommendations regarding the potential compliance costs and other impacts of the proposed rule on those entities. These findings and recommendations are set forth in the Small Business Review Panel Report, which will be made part of the

[121] The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the Bureau to convene a Small Business Review Panel before proposing a rule that may have a substantial economic impact on a significant number of small entities. *See* Public Law. 104-121, tit. II, 110 Stat. 847, 857 (1996) (as amended by Pub. L. 110-28, sec. 8302 (2007)).

[122] Available at http://www.consumerfinance.gov/blog/sbrefa-small-providers-and-mortgage-disclosure/.

administrative record in this rulemaking.[123] The Bureau considered these findings and recommendations in preparing the TILA-RESPA Proposal and addressed certain specific examples in the proposal, as well as below in this final rule.

In addition, the Bureau held roundtable meetings with other Federal banking and housing regulators, consumer advocacy groups, and industry representatives regarding the Small Business Review Panel Outline. The Bureau considered feedback provided by roundtable participants in preparing the proposal.

E. The Bureau's Proposal

As described above in part II.D, in July 2012, the Bureau proposed for public comment a rule amending Regulation Z to implement sections 1032(f), 1098, and 1100A of the Dodd-Frank Act, which direct the Bureau to combine the mortgage disclosures required under TILA and RESPA. *See* 77 FR 51116 (August 23, 2012). Consistent with those provisions, the proposed rule would have applied to most closed-end consumer mortgages. The proposed rule would not have applied to home-equity lines of credit, reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to real property. The proposed rule also would not have applied to loans made by a creditor who makes five or fewer mortgages in a year. In addition, the proposed rule would have amended portions of Regulation X, for consistency with the proposed amendments to Regulation Z.

As discussed above, to accomplish the Dodd-Frank Act's mandate to combine the disclosures required under TILA and RESPA, the Bureau engaged in extensive consumer and industry research and public outreach for more than a year. Based on that input, the Bureau

[123] *Final Report of the Small Business Review Panel on CFPB's Proposals Under Consideration for Integration of TILA and RESPA Mortgage Disclosure Requirements* (Apr. 23, 2012), available at http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-sbrefa-feedback.pdf.

proposed a rule with new, combined forms. The proposed rule also would have provided a detailed explanation of how the forms should be filled out and used. In developing the proposed forms, the Bureau reconciled the differences between the existing forms and combined several other mandated disclosures.

The first proposed form (the Loan Estimate) was designed to provide disclosures that would be helpful to consumers in understanding the key features, costs, and risks of the mortgage for which they are applying. This form would have been provided to consumers within three business days after they submit a loan application. The Loan Estimate would have replaced two current Federal forms: the RESPA GFE and the early TILA disclosure. The proposed rule and commentary would have contained detailed instructions as to how each line on the Loan Estimate would be completed, and also would have contained sample forms for different types of loan products. In addition, the Loan Estimate would have incorporated new disclosures required under the Dodd-Frank Act. Under the proposed rule, the creditor would have been permitted to rely on a mortgage broker to provide the Loan Estimate, but the creditor also would have remained responsible for the accuracy of the form. The creditor or broker would have been required to give the form to the consumer within three business days after the consumer applies for a mortgage loan, and the proposed rule would have contained a specific definition of what constitutes an "application" for these purposes. The proposed rule would have permitted creditors and brokers to provide consumers with written estimates prior to application, but would have required that any such written estimates contain a disclaimer to prevent confusion with the Loan Estimate.

The second proposed form (the Closing Disclosure) was designed to provide disclosures that would be helpful to consumers in understanding all of the costs of the transaction. This form would have been provided to consumers three business days before they close on the loan. The form would have used clear language and design to make it easier for consumers to locate key information, such as interest rate, monthly payments, and costs to close the loan. The form also would have provided more information to help consumers decide whether they can afford the loan and to compare the cost of different loan offers, including the cost of the loans over time. The proposed Closing Disclosure would have replaced the RESPA settlement statement and the corrected TILA disclosure. The proposed rule and commentary would have contained detailed instructions as to how each line on the Closing Disclosure would be completed. In addition, the Closing Disclosure would have contained additional new disclosures required by the Dodd-Frank Act and a detailed accounting of the settlement transaction.

Under the proposed rule, the creditor would have been required to give consumers the Closing Disclosure at least three business days before the consumer closes on the loan. Generally, if changes occurred between the time the Closing Disclosure is given and the closing, the consumer would have been provided a new form and also would have been given three additional business days to review that form before closing. However, the proposed rule would have contained an exception from the three-business-day requirement for some common changes, such as changes resulting from negotiations between buyer and seller after the final walk-through and for minor changes which result in less than $100 in increased costs. The Bureau proposed two alternatives for who would be required to provide consumers with the Closing Disclosure. Under the first option, the creditor would have been responsible for delivering the Closing Disclosure form to the consumer. Under the second option, the creditor would have been able to rely on the settlement agent to provide the form. However, under the second option, the creditor also would have remained responsible for the accuracy of the form.

Similar to existing law, the proposed rule would have restricted the circumstances in which consumers can be required to pay more for settlement services than the amount stated on their Loan Estimate. Unless an exception applies, charges for the following services would not have been permitted to increase: (1) the creditor's or mortgage broker's charges for its own services; (2) charges for services provided by an affiliate of the creditor or mortgage broker; and (3) charges for services for which the creditor or mortgage broker does not permit the consumer to shop. Also unless an exception applies, charges for other services generally would not have been permitted to increase by more than 10 percent. The proposed rule would have provided exceptions, for example, when: (1) the consumer asks for a change; (2) the consumer chooses a service provider that was not identified by the creditor; (3) information provided at application was inaccurate or becomes inaccurate; or (4) the Loan Estimate expires. When an exception applies, the creditor generally would have been required to provide an updated Loan Estimate within three business days.

In addition to proposing rules and model forms for the Loan Estimate and Closing Disclosure, the proposed rule would have redefined the way the Annual Percentage Rate or "APR" is calculated and would have required creditors to keep records of compliance, including records of compliance with the requirements to provide the Loan Estimate and Closing Disclosure to consumers in an electronic, machine readable format.

F. Feedback Provided to the Bureau

The Bureau received over 2,800 comments on the TILA-RESPA proposal during the comment period from, among others, consumer advocacy groups; national, State, and regional industry trade associations; banks; community banks; credit unions; financial companies; mortgage brokers; title insurance underwriters; title insurance agents and companies; settlement agents; escrow agents; law firms; document software companies; loan origination software companies; appraisal management companies; appraisers; State housing finance authorities, counseling associations, and intermediaries; State attorneys general; associations of State financial services regulators; State bar associations; government sponsored enterprises (GSEs); a member of the U.S. Congress; the Committee on Small Business of the U.S. House of Representatives; Federal agencies, including the staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission (FTC staff), and the Office of Advocacy of the Small Business Administration (SBA); and individual consumers and academics. In addition, the Bureau also considered other information on the record.[124] Materials on the record are publicly available at http://www.regulations.gov. This information is discussed below in this part, the section-by-section analysis, and subsequent parts of this notice, as applicable.

As discussed in further detail below, the Bureau sought comment in its 2012 HOEPA Proposal on whether to adopt certain adjustments or mitigating measures in its HOEPA implementing regulations if it were to adopt a broader definition of "finance charge" under Regulation Z, as proposed in the TILA-RESPA Proposal. Subsequently, the Bureau published a notice in the *Federal Register* making clear that it would defer its decision on whether to adopt the more inclusive finance charge proposal, and therefore any implementation thereof, until it finalized the TILA-RESPA Proposal. 77 FR 54843 (Sept. 6, 2012). Accordingly, the Bureau's 2013 HOEPA Final Rule deferred discussion of comments to the 2012 HOEPA Proposal addressing proposed mitigating measures to account for a more inclusive finance charge under

[124]The Bureau's policy regarding ex parte communications can be found at http://files.consumerfinance.gov/f/2011/08/Bulletin_20110819_ExPartePresentationsRulemakingProceedings.pdf.

HOEPA. In addition, the Bureau deferred discussion of comments received regarding a more inclusive finance charge definition and potential mitigating measures in connection with the proposals finalized by the 2013 ATR Final Rule, the 2013 Escrows Final Rule, and the 2013 Interagency Appraisals Final Rule, which also would have been affected by a broader definition of the finance charge. Comments regarding such potential mitigating measures and the Bureau's proposal of a more inclusive definition of the finance charge are addressed collectively in the section-by-section analysis of § 1026.4, below.

The Bureau has considered the comments and ex parte communications and has decided to modify the proposal in certain respects and adopt the final rule as described below in the section-by-section analysis.

G. Post-Proposal Consumer Testing

While developing the proposed integrated disclosures, the Bureau received feedback from stakeholders regarding additional testing they believed would be necessary for the integrated disclosures. For example, during the Small Business Review Panel, several small business representatives recommended that the Bureau explore the feasibility of conducting testing of the integrated disclosures on actual loans before issuing a final rule. *See* Small Business Review Panel Report at 28. In addition, several comments to the proposal suggested that the Bureau conduct additional testing of the integrated disclosures on actual loans in the marketplace. Based on this feedback and public comments and consistent with the Small Business Review Panel's recommendation, the Bureau has considered what additional testing would be appropriate, including the feasibility of testing the integrated disclosures on actual loans.

The Bureau determined that testing the integrated disclosures on actual loans would not be feasible in the course of this rulemaking, nor would it provide the Bureau with significantly better information compared to the information that would be obtained from qualitative and quantitative consumer testing of the integrated disclosures. The length of time that would be necessary to develop and conduct such a study would be extensive. To conduct such a study involving actual loans in the marketplace, the Bureau would need to: develop the methodology of such a study; submit the methodology and any additional information necessary to OMB to obtain prior approval to conduct the study under the Paperwork Reduction Act; recruit and identify industry stakeholders in the lending, title insurance, and settlement industries willing to participate in such a study; assist such industry participants in developing unique systems to produce disclosures in conformity with the TILA-RESPA Proposal; provide sufficient legal protections to such industry participants involved in the study; and collect data from such transactions throughout the application through closing stages, which period of time can last 90 days in many cases. Also, the Bureau had not yet finalized a policy under section 1032(e) of the Dodd-Frank Act during the course of finalizing the proposal, which would set forth standards and safeguards for conducting such a program and providing waivers from Federal disclosure requirements, and thus, formal processes for such a study were not in place.[125] In addition, in a controlled setting in a testing facility, the Bureau was able to conduct a study with a large number of participants (858 participants) in a short period of time (fielded in approximately two months), with a control group using the current disclosures, under which participants in both groups were exposed to the same loans, environment, and minimal level of distractions. The

[125] *See* 78 FR 14030 (Oct. 29, 2013) (finalizing Policy to Encourage Trial Disclosure Programs under section 1032(e) of the Dodd-Frank Act); 77 FR 74625 (Dec. 17, 2012) (seeking comment on a proposed "Policy to Encourage Trial Disclosure Programs" under section 1032(e) of the Dodd-Frank Act); *see also* 78 FR 36532 (June 18, 2013) (seeking comment under the Paperwork Reduction Act on the proposed policy).

Bureau believes such a controlled setting has enabled the Bureau to obtain data that isolates the performance differences between the current and integrated disclosures. In addition, the Bureau believes that commenters and industry stakeholders suggesting that the Bureau should conduct consumer testing in actual loans in the marketplace are, in part, interested in such testing because of its ability to identify compliance issues with the proposed rule and disclosures. The Bureau believes such compliance issues have been identified through other means, such as through its analysis of the public comments received, review of past disclosure rulemakings (including HUD's 2008 RESPA Final Rule), and extensive outreach prior to issuing the proposal.

However, as described further below, the Bureau has conducted additional qualitative testing of certain revisions the Bureau made to the integrated disclosures based on public comments, as well as of Spanish translations of the integrated disclosures and modified versions of the integrated disclosures for transactions without sellers (in particular, refinance transactions). The Bureau has also conducted a large scale quantitative test of the integrated disclosures to confirm that they aid consumers' understanding of mortgage transactions and evaluate the performance of the integrated disclosures against the current RESPA GFE, RESPA settlement statement, and early and final TILA disclosures. The Bureau again contracted with Kleimann (the research firm with which the Bureau originally contracted to assist with the development of the integrated disclosures and to conduct the pre-proposal qualitative testing) to conduct this post-proposal testing. This qualitative testing after issuance of the proposal utilized identical methodology as the pre-proposal qualitative testing, except that the testing did not include industry participants because of the targeted focus of the testing on consumer understanding of particular aspects of the integrated disclosures.

Spanish Language Testing

There are many consumers in the U.S. for whom English is not their primary language.[126] Spanish speakers make up approximately 62 percent of the people in the United States that speak a language other than English in their homes.[127] During the early stages of the development of the proposed integrated disclosures, the Bureau received informal feedback requesting that the Bureau develop Spanish language versions of the integrated disclosures. Accordingly, as described in the TILA-RESPA Proposal, the Bureau's consumer testing included two rounds of testing with Spanish-speaking consumers of Spanish-language prototype integrated disclosures to determine whether co-development of a non-English version of the integrated disclosures would be beneficial to consumers. The Bureau wanted to determine whether there were any structural issues in the prototype designs that could cause differences in performance for speakers of Spanish.

After two rounds of consumer testing in Spanish, the Bureau determined that co-development of a separate Spanish version of the disclosures would likely yield little benefit to consumers, because any differences in performance with the Spanish prototypes during testing were caused more by translation than design and structure issues. The Bureau also believed that the differences in language would not necessitate changes to the design of the disclosure given that the Bureau intentionally pursued a more graphic than textual design for the Loan Estimate, which used as few words as possible. However, the Bureau was still interested in developing Spanish language versions of the integrated disclosures, as it believed consumers who speak only Spanish or speak a limited amount of English would benefit from improved understanding of

[126] According to the U.S. Census Bureau, based on data from the 2007 American Community Survey, 55.4 million people spoke a language other than English at home. U.S. Census Bureau, *Language Use in the United States: 2007*, ACS-12 (Apr. 2010), available at http://www.census.gov/hhes/socdemo/language/data/acs/ACS-12.pdf.
[127] Id.

their mortgage transactions. While the proposed rule only included English-language disclosure sample forms, it would have permitted the translation of these forms. In addition, the Bureau stated in the proposal that it planned to review issues concerning translations of the integrated disclosures after the proposal and solicited comment on whether the final rule should include sample Spanish-language or other non-English language forms.

The Bureau received several comments requesting that the Bureau publish disclosures in Spanish or other non-English languages, and pursue additional consumer testing of Spanish translations of the integrated disclosures. These comments came from an individual loan officer, several industry trade associations, a national title insurance company, and a consumer advocacy group. The individual loan officer commenter, who worked at a non-depository lender, generally praised the proposed integrated disclosures, but inquired if non-English forms would be made available. The commenter suggested that many non-English speaking consumers were subject to deceptive practices because they could not read the English language disclosures. The consumer advocacy group commenter strongly urged the Bureau to publish Spanish translations of the integrated disclosures, as well as translations in other languages spoken in the U.S., such as Chinese, Korean, Russian, and Vietnamese. An industry trade association representing banks stated that it would be very useful for the Bureau to provide Spanish or other non-English translations of the integrated disclosures so that banks could use them when loan transactions occur in other languages. The commenter also encouraged the Bureau to test these translations to monitor their effectiveness. Several industry trade associations representing banks and mortgage lenders stated that it would greatly facilitate creditors providing disclosures in languages other than English if the Bureau translated the integrated disclosures into all major languages. The commenters stated that it would be more efficient for the Bureau to translate the disclosures, rather than creditors separately translating them, and noted that the Bureau could then assure itself that such translations were accurate.

A national title insurance company stated that providing a blank non-English disclosure form would be useful if consumers that speak other languages could request it in addition to the English language disclosure required under the regulation, because they could compare it to the completed Loan Estimate or Closing Disclosure received in English. However, the commenter stated that requiring creditors or settlement agents to maintain a supply of forms in non-English languages would be unduly burdensome with little benefit to the consumer, especially for small entities.

The Bureau contracted with Kleimann to translate the Loan Estimate and Closing Disclosure into Spanish, adjust the designs as necessary to accommodate any additional space required for the translated text, and qualitatively test the translations with Spanish-speaking consumers.

The Bureau conducted four rounds of testing in Spanish in October 2012, November 2012, December 2012, and July 2013 in Arlington, Virginia; Phoenix, Arizona; Miami, Florida; and Baltimore, Maryland, respectively. This post-proposal Spanish qualitative testing included 29 consumers in total. The first three rounds of Spanish qualitative consumer testing used Spanish translations of the integrated disclosure substantially as proposed, with modifications to the design to accommodate the additional space necessary for the Spanish language text and to revise the order of certain disclosures so that they remain in alphabetical order, as on the English language versions of the integrated disclosures.[128] The fourth round used prototype integrated

[128] The modifications to the design to accommodate the additional space necessary for the Spanish language text necessitated the use of a sixth page for the Spanish language version of the Closing Disclosure.

disclosures that included the potential modifications to the integrated disclosures the Bureau was considering based on the public comments to the proposed rule, including the modifications to the disclosures permitted in this final rule for transactions without sellers, as described in the section-by-section analysis below.

The Spanish language qualitative testing focused on translation issues, with a particular focus on terms that when directly translated into Spanish do not convey the same meaning as in English, such as the term "balloon payment." The Bureau conducted this testing to ensure that the Spanish translations would be effective for consumers that speak different dialects of Spanish used throughout the country. As described below in the section-by-section analyses of § 1026.37(o) and appendix H to Regulation Z, the Bureau is adopting Spanish language samples of the integrated disclosures in this final rule, which are based on this Spanish language qualitative testing. For a detailed discussion of this testing, see the report prepared by Kleimann, *Post-Proposal Testing of the Spanish and Refinance Integrated TILA-RESPA Disclosures* (Kleimann Post-Proposal Testing Report), which the Bureau is releasing on its website in connection with this final rule.[129]

In addition, as discussed in the section-by-section analysis of appendix H to Regulation Z below, the Bureau is adopting Spanish language versions of some of the English language versions of the Loan Estimates and Closing Disclosures in forms H-24 and H-25 of appendix H, which are based on the Bureau's consumer testing. Regarding the national title insurance company commenter's concerns regarding the burden associated with a requirement to use non-English language disclosures, the Bureau is not requiring in this final rule that creditors use non-

[129] Kleimann Communication Group, Inc., *Post-Proposal Testing of the Spanish and Refinance Integrated TILA-RESPA Disclosures* (November 2013), available at http://files.consumerfinance.gov/f/201311_cfpb_report_tila-respa_testing-spanish-refinancing.pdf.

English language versions of the integrated disclosures. The final rule permits creditors to translate the disclosures into other languages, as discussed in the section-by-section analysis of §§ 1026.37(o) and 1026.38(t). The Bureau believes, as suggested by other comments, that including in the final rule versions of the integrated disclosures in Spanish that the Bureau has tested with consumers will assist industry in communicating with Spanish-speaking consumers, and facilitate industry compliance with any applicable State laws requiring the use of non-English versions of the integrated disclosures.

Quantitative Study

In the TILA-RESPA Proposal, the Bureau stated that it may conduct quantitative testing of the integrated disclosures to confirm that the forms aid consumers' understanding of mortgage transactions, if it determined such testing to be appropriate. The Bureau understood from its work with Kleimann that validation testing, in the form of a quantitative study, can be an important phase of the user-centered design process. A quantitative test would supplement the Bureau's pre-proposal qualitative data and validate the results of the Bureau's qualitative consumer testing conducted before issuance of the proposal, by providing the Bureau with statistical data and evidence about the performance of the integrated disclosures. However, generally, these studies cannot occur until the disclosure design to be tested has been determined, and thus, the Bureau delayed conducting such testing until after the proposed rule was issued and it had received public comment on the proposed designs. Accordingly, the Bureau determined to investigate whether such a study would be appropriate after issuance of the proposed rule.

The Bureau also received several comments to the TILA-RESPA Proposal regarding the benefits of conducting a quantitative test of the integrated disclosures. The FTC staff commended the Bureau's qualitative testing; however, they also highlighted the benefits of quantitative testing, stating that such testing would allow the Bureau to confirm that the integrated disclosures do, in fact, aid consumer understanding. The FTC staff encouraged the Bureau to conduct a quantitative test with two key elements: (1) a focus on the actual performance of the disclosures, rather than consumers' preferences; and (2) a control group in the study using the current disclosure forms, to isolate and measure the impact of the integrated disclosures. The FTC staff noted that the integrated disclosures may contain more information than what is included on the current disclosures, but still encouraged the Bureau to conduct such a study to compare the information that was the same between the disclosures. A State attorney general supported the use of quantitative testing and stated that it concurred with the FTC staff's comment letter.

A State association of financial services regulators commented that further quantitative testing of consumer comprehension would be a helpful exercise and give the Bureau a more precise idea as to how many consumers properly understand mortgage terms, costs and differences across products. The commenter suggested that the Bureau's consumer testing should be supplemented by more quantitative data and controlled testing of comprehension, and that, without statistically sound quantitative evaluation, understanding the effect of the integrated disclosures would be imprecise.

The Bureau also solicited comments on conducting such quantitative testing under the Paperwork Reduction Act, as it would be an information collection requiring the approval of OMB under that statute. *See* 44 U.S.C. 3506(c)(2)(A). In March 2012, the Bureau published a notice in the *Federal Register* soliciting comment for 60 days, to obtain comments prior to the Bureau's planning the quantitative testing. 77 FR 18793 (Mar. 28, 2012). The Bureau did not receive any comments in response to that notice. In February 2013, the Bureau also published a subsequent notice to solicit comment on the Bureau's proposed quantitative testing under the Paperwork Reduction Act, which was open for 30 days. 78 FR 8113 (Feb. 5, 2013). In response to that notice, the Bureau received six comments from national and State industry trade associations. The Bureau addressed those comments in the Supporting Statement it submitted to OMB to obtain that agency's approval to conduct the quantitative testing under the Paperwork Reduction Act. On March 26, 2013, the Bureau received OMB's approval to conduct the quantitative testing, which was assigned OMB control number 3170-0033.

The Bureau contracted with Kleimann to conduct the quantitative test of the integrated disclosures to confirm that the disclosures aid consumers' understanding of mortgage transactions and evaluate the performance of the forms against the current RESPA GFE, RESPA settlement statement, and early and final TILA disclosures (the Quantitative Study). The Quantitative Study's goal was to confirm that the Bureau's integrated disclosures (the Loan Estimate and the Closing Disclosure) aided consumers in understanding mortgage loan transactions, including enabling consumers to identify and compare loan terms and costs, choose between loans, and identify and compare changes between estimated and final amounts. In addition, the goal of the baseline test was to confirm that the integrated disclosures perform better on those measures than the current disclosures.

The Quantitative Study design consisted of a sample of 858 consumer participants, and a 2 by 2 by 2 by 2 between-subjects experimental design. The study factors, or independent variables, included the following: (1) form type (current or integrated disclosures); (2) loan type (fixed or adjustable rate loans); (3) difficulty type (relatively easier or more challenging loans); and (4) consumer type (experienced or inexperienced with mortgage loans). The study consisted of a 60-minute session in which consumer participants answered questions on a written questionnaire about different loan transactions that were presented to them. As this was a between-subjects design, consumer participants only used either the current or integrated disclosures to enable the Bureau to better evaluate the performance differences between the two form types. The Bureau conducted the study in 20 locations across the country (specifically, the continental United States), which covered the four Census regions and the Census sub-regions and included participants from urban, suburban, and rural areas. To qualify for the main survey, participants had to be age 18 years or older, live in a household within 50 miles of the location used for the study, have purchased or refinanced a home in the last five years or have plans to purchase or refinance in the next two years, and agree to participate in the in-person testing session.

The Quantitative Study used an analysis that examined the accuracy of participant responses to the questions in the study for the current and the integrated disclosures. This analysis is similar to the analysis reported by the FTC staff in a 2007 study evaluating prototype mortgage disclosures in comparison to then-current TILA and REPSA disclosures.[130] The Quantitative Study concluded that the proposed integrated disclosures, with the minor modifications made in response to public comments,[131] performed better than the current

[130] James Lacko and Janis Pappalardo, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms,* Federal Trade Commission, p. 53 (June 2007), available at http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf.

[131] Prior to conducting the Quantitative Study, the Bureau made modifications to the proposed integrated disclosures in response to public comments to increase consistency within and between the Loan Estimate and Closing Disclosure. The Bureau revised: the Assumption disclosures under§§ 1026.37(m) and 1026.38(l) so that the language between the two disclosures would match; the reference language in the Loan Terms table under §§ 1026.37(b) and 1026.38(b) so that the reference to the estimated total payment monthly payment used the same term as in the Projected Payments table under §§ 1026.37(c) and 1026.38(c), and to put the language in sentence case to increase readability; the checkboxes in the Escrow Account disclosure on the Closing Disclosure under § 1026.38(l)(7) to delete the “require or” from the second checkbox; change the “Agent” label on page 1 of the Closing Disclosure under § 1026.38(a) to “Settlement Agent” to match the Contact Information table under § 1026.38(r); removed the word “Borrower” from the “Borrower’s Loan Amount” label under § 1026.38(j) to match the term used in the Loan Terms table under §§ 1026.37(b) and 1026.38(b); and changed the labels of the row

disclosures based on aggregate measures of the data. That data showed a statistically significant performance advantage of around 16 percentage points for the proposed disclosures that was consistent across the variables of the study: experienced as well as inexperienced consumers, relatively easier as well as more challenging loans, and fixed rate as well as adjustable rate loans. The integrated disclosures performed better than the current disclosures with respect to specific tasks in the study as well. The integrated disclosures showed a performance advantage of about 24 percentage points for comparing two loans using the application disclosures; about 10 percentage points for understanding one loan using the application disclosures; about 17 percentage points for comparing the application and closing disclosures; and about 29 percentage points for understanding the final loan terms and costs using the closing disclosures. In addition to measuring the accuracy of responses to questions about particular loans, participants in the Quantitative Study were asked to select between two loans using the application disclosures (either early TILA disclosures and RESPA GFEs or Loan Estimates), and then asked in an open-ended question to provide reasons for their selection. In response to the open-ended question, participants using the integrated disclosures on average provided a greater total number of reasons for their selection of a particular loan, which difference was statistically significant and consistent across the variables of the study. This result suggests that participants using the integrated disclosures were able to articulate and explain more reasons for their choice. For a detailed discussion of this testing, see the report prepared by Kleimann, *Quantitative Study of the Current and Integrated TILA-RESPA Disclosures* (Kleimann Quantitative Study Report), which

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headings in the Escrow Account disclosure on page 4 of the Closing Disclosure under § 1026.38(l)(7) to include the word "escrow." See the section-by-section analyses of the respective sections for more information regarding these modifications.

the Bureau is releasing on its website in connection with this final rule.[132]

Qualitative Testing of Revisions to the Proposed Disclosures

The Bureau reviewed comments regarding the design of the proposed Loan Estimate and Closing Disclosure. Many of the disclosure-related comments were suggestions of minor modifications to the disclosures to ensure greater consistency within and between the Loan Estimate and Closing Disclosure. The Bureau determined that some of the suggested minor modifications to the proposed integrated disclosures were appropriate, as described in the section-by-section analyses of the respective sections of §§ 1026.37 and 1026.38 below.

However, some comments suggested more substantial modifications to the proposed Loan Estimate and Closing Disclosure with respect to the Calculating Cash to Close table in refinance transactions and the Cash to Close table in all transactions. The Bureau considered these comments and feedback and determined that modifications to such disclosures may benefit consumer understanding, but because they involved more than minor modifications, should be developed and evaluated through further qualitative consumer testing, as described in more detail below.

In addition, a joint ex parte letter from three industry trade associations suggested that the Bureau's proposed integrated disclosures do not accommodate certain types of loans, such as loans with buydowns; closed-end second-lien loans originated simultaneously with a first-lien loan; refinances and cash-out refinances; refinances of loans with a co-borrower added or removed; or loans with a guarantor or non-occupant co-borrower. The trade associations also suggested that the Bureau conduct further testing of the disclosures for all loan products

[132] Kleimann Communication Group, Inc., *Quantitative Study of the Current and Integrated TILA-RESPA Disclosures* (November 2013), available at http://files.consumerfinance.gov/f/201311_cfpb_study_tila-respa_disclosure-comparison.pdf. See chapters 4 and 5 of the report for the results and conclusions of the study.

available through the GSEs and FHA. The trade associations also suggested that consumers would not be able to identify changed information between an original and revised Loan Estimate. The Bureau believes that consumers can compare two Loan Estimates and identify changes. As described above, in the Bureau's Quantitative Study, the Bureau's integrated disclosures showed a performance advantage of approximately 24 percentage points over the current disclosures for comparing two loans. *See* Kleimann Quantitative Study Report at 43.

With respect to the trade associations' suggestion that the Bureau's integrated disclosures do not accommodate certain factual scenarios or loan products, the letter only stated a conclusion and did not explain how the Bureau's proposed disclosures would not accommodate such scenarios or products. The Bureau is not aware of any reasons why such factual scenarios or loan products would not be accommodated by the Bureau's integrated disclosures. Indeed, some of the factual scenarios and loan products identified by the letter are specifically addressed in current Regulation Z as well as in this final rule, such as loans with buydowns, refinance transactions, and loans with multiple borrowers. For example, this final rule amends comments 17(c)(1)-3 and -4 to provide further guidance regarding buydowns. *See* the section-by-section analysis of § 1026.17(c)(1); *see also* the section-by-section analysis of § 1026.17(d) (regarding loans with multiple borrowers). Further, as described in this part and in the section-by-section analyses of § 1026.37(d) and (h) and § 1026.38(d) and (e) below, the Bureau is making modifications to the integrated disclosures that can be used in transactions not involving a seller, including refinance transactions.

Specifically, the Bureau received several comment letters questioning the ability of consumers to understand easily from the proposed disclosures that they received funds at the consummation of a refinance transaction. Accordingly, as noted above, the Bureau determined that testing a modification to the integrated disclosures for refinance transactions (and other transactions without sellers) would be appropriate.

In addition, as also described below in the section-by-section analysis of § 1026.37(d), the Bureau received comments critical of the emphasis placed on the cash to close amount on the first page of the proposed Loan Estimate and Closing Disclosure. Further, although the Bureau learned from the Quantitative Study that the Bureau's integrated disclosures generally performed better than the current disclosure forms, the Bureau also learned that consumer participants performed better at identifying the total estimated closing costs using the RESPA GFE and early TILA disclosure than with the Loan Estimate.[133] Accordingly, the Bureau determined that it would be appropriate to test a modification to the Cash to Close table on the first page of the proposed Loan Estimate to place equal emphasis on the cash to close and total estimated closing costs amounts and to enable easier identification of the total estimated closing costs.

The Bureau contracted with Kleimann to assist in the design, research, and qualitative consumer testing of potential modifications to the proposed integrated disclosures. The Bureau conducted one round of qualitative testing in June 2013, and two rounds in July 2013, in Bethesda, Maryland; Baltimore, Maryland; and Richmond, Virginia, respectively. This post-proposal qualitative consumer testing included 21 consumers in total. For a detailed discussion of this testing, see the Kleimann Post-Proposal Testing Report.[134]

H. Delay of Title 14 Disclosures

Title XIV Disclosures

In addition to the integrated disclosure requirements in title X of the Dodd-Frank Act,

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[133] *See* Kleimann Quantitative Study Report at 68-69.

[134] Available at http://files.consumerfinance.gov/f/201311_cfpb_report_tila-respa_testing-spanish-refinancing.pdf.

various provisions of title XIV of the Dodd-Frank Act amend TILA, RESPA, and other consumer financial laws to impose new disclosure requirements for mortgage transactions (the Title XIV Disclosures). These provisions generally require disclosure of certain information when a consumer applies for a mortgage loan or shortly before consummation of the loan, around the same time that consumers will receive the TILA-RESPA integrated disclosures required by sections 1032(f), 1098, and 1100A of the Dodd-Frank Act, and after consummation of the loan if certain events occur. Dodd-Frank Act title XIV provisions generally take effect within 18 months after the designated transfer date (*i.e.*, by January 21, 2013) unless final rules implementing those requirements are issued on or before that date and provide for a different effective date pursuant to Dodd-Frank Act section 1400(c)(3).[135]

The Title XIV Disclosures generally include the following:

- Warning regarding negative amortization features. Dodd-Frank Act section 1414(a); TILA section 129C(f)(1).[136]
- Disclosure of State law anti-deficiency protections. Dodd-Frank Act section 1414(c); TILA section 129C(g)(2) and (3).
- Disclosure regarding creditor's partial payment policy prior to consummation and, for new creditors, after consummation. Dodd-Frank Act section 1414(d); TILA section

[135] Dodd-Frank Act section 1400(c)(3) is codified at 15 U.S.C. 1601 note.
[136] Dodd-Frank Act section 1414(a) also added to TILA new section 129C(f)(2), which requires first-time borrowers for certain residential mortgage loans that could result in negative amortization to provide the creditor with documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified as competent to provide such counseling by HUD. That provision is implemented in the Bureau's proposal to implement Dodd-Frank Act requirements expanding protections for "high-cost" mortgage loans under the Home Ownership and Equity Protection Act of 1994 (HOEPA), pursuant to TILA sections 103(bb) and 129, as amended by Dodd-Frank Act sections 1431 through 1433 (the 2012 HOEPA Proposal). 77 FR 49090 (Aug. 15, 2012). The 2012 HOEPA Proposal also implements the requirement of RESPA section 5(c), added by section 1450 of the Dodd-Frank Act, that lenders provide borrowers with a list of certified homeownership counselors.

129C(h).

- Disclosure regarding mandatory escrow or impound accounts. Dodd-Frank Act section 1461(a); TILA section 129D(h).
- Disclosure prior to consummation regarding waiver of escrow in connection with the transaction. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(A).
- Disclosure regarding cancellation of escrow after consummation. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(B).
- Disclosure of monthly payment, including escrow, at initial and fully-indexed rate for variable-rate residential mortgage loan transactions. Dodd-Frank Act section 1419; TILA section 128(a)(16).
- Repayment analysis disclosure to include amount of escrow payments for taxes and insurance. Dodd-Frank Act section 1465; TILA section 128(b)(4).
- Disclosure of aggregate amount of settlement charges, amount of charges included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds, and the aggregate amount of other fees or required payments in connection with a residential mortgage loan. Dodd-Frank Act section 1419; TILA section 128(a)(17).
- Disclosure of aggregate amount of mortgage originator fees and the amount of fees paid by the consumer and the creditor. Dodd-Frank Act section 1419; TILA section 128(a)(18).
- Disclosure of total interest as a percentage of principal. Dodd-Frank Act section 1419; TILA section 128(a)(19).
- Optional disclosure of appraisal management company fees. Dodd-Frank Act section

1475; RESPA section 4(c).

- Disclosure regarding notice of reset of hybrid adjustable rate mortgage. Dodd-Frank Act section 1418(a); TILA section 128A(b).
- Loan originator identifier requirement. Dodd-Frank section 1402(a)(2); TILA section 129B(b)(1)(B).
- Consumer notification regarding appraisals for higher-risk mortgages. Dodd-Frank Act section 1471; TILA section 129H(d).
- Consumer notification regarding the right to receive an appraisal copy. Dodd-Frank Act section 1474; Equal Credit Opportunity Act (ECOA) section 701(e)(5).

As noted in the list above, the Title XIV Disclosures include certain disclosures that may need to be provided to consumers both before and after consummation. For example, the Title XIV Disclosures include disclosures regarding a creditor's policy for acceptance of partial loan payments both before consummation and, for persons who subsequently become creditors for the transaction, after consummation as required by new TILA section 129C(h), added by Dodd-Frank Act section 1414(d).[137] In addition, the Title XIV Disclosures include disclosures for consumers who waive or cancel escrow services both before and after consummation, added by Dodd-Frank Act section 1462. Specifically, new TILA section 129D(j)(1)(A) requires a creditor or servicer to provide a disclosure with the information set forth under TILA section 129D(j)(2) when an impound, trust, or other type of account for the payment of property taxes, insurance

[137] As it stated in the TILA-RESPA Proposal, the Bureau believes that to give effect to the legislative purpose of section 1414(d) of the Dodd-Frank Act, the disclosure requirements of TILA section 129C(h) should apply without regard to whether the person would be a "creditor" under TILA and Regulation Z. *See* 77 FR 51116, 51265. For these reasons, in the TILA-RESPA Proposal, the Bureau proposed to retain the term "covered person" under § 1026.39(a)(1) and its definition, which would subject such covered persons to the proposed disclosure requirements. *Id.* As in the TILA-RESPA Proposal, in this final rule the Bureau is temporarily exempting "persons" (as defined in Regulation Z) rather than "creditors" from compliance with the provisions of TILA section 129C(h), which includes covered persons.

premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction (the Pre-Consummation Escrow Waiver Disclosure). New TILA section 129D(j)(1)(B) requires a creditor or servicer to provide disclosures post-consummation with the information set forth under TILA section 129D(j)(2) when a consumer chooses, and provides written notice of the choice, to close his or her escrow account established in connection with a consumer credit transaction secured by real property in accordance with any statute, regulation, or contractual agreement (the Post-Consummation Escrow Cancellation Disclosure). 15 U.S.C. 1639d(j)(1)(A), 1639d(j)(1)(B). The statute sets forth an identical set of information for both of these disclosures.[138]

Board's 2011 Escrows Proposal

Sections 1461 and 1462 of the Dodd-Frank Act create new TILA section 129D, which substantially codifies requirements that the Board had previously adopted in Regulation Z regarding escrow requirements for higher-priced mortgage loans, but also adds disclosure requirements and lengthens the period for which escrow accounts are required. 15 U.S.C. 1639d. On March 2, 2011, the Board proposed amendments to Regulation Z implementing certain requirements of sections 1461 and 1462 of the Dodd-Frank Act. 76 FR 11598 (Mar. 2, 2011) (Board's 2011 Escrows Proposal). The Board proposed, among other things, to implement the disclosure requirements under TILA section 129D(j)(1) in Regulation Z under a new

[138] The information set forth under TILA section 129D(j)(2) includes information concerning any applicable fees or costs associated with either the non-establishment of the escrow account at the time of the transaction, or any subsequent closure of the account; a clear and prominent statement that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial; a clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicers and the potentially higher cost (including any potential commission payments to the servicer) or reduced coverage for the consumer in the event of any such creditor-placed insurance; and other information the Bureau determines is necessary for consumer protection. 15 U.S.C. 1639d(j)(2).

§ 226.19(f)(2)(ii) and § 226.20(d) of the Board's Regulation Z, including both the Pre-Consummation Escrow Waiver Disclosure and the Post-Consummation Escrow Cancellation Disclosure.

The comment period for the Board's 2011 Escrows Proposal closed on May 2, 2011. The Board did not finalize the 2011 Escrows Proposal. Subsequent to the issuance of the Board's 2011 Escrows Proposal, the authority for finalizing the proposal was transferred to the Bureau pursuant to the Dodd-Frank Act.[139]

TILA-RESPA Proposal to Delay Certain Title XIV Disclosures

The TILA-RESPA Proposal requested comment on the proposed rules and forms to integrate the disclosure requirements of TILA and RESPA, as required by sections 1032(f), 1098, and 1100A of the Dodd-Frank Act.[140] In addition, the TILA-RESPA Proposal requested comment on an amendment to § 1026.1(c) of Regulation Z, which would have temporarily exempted persons from compliance with the following Title XIV Disclosures (collectively, the Affected Title XIV Disclosures) so that the disclosures could instead be incorporated into the TILA-RESPA integrated disclosures that would be finalized in the future:

- Warning regarding negative amortization features. Dodd-Frank Act section 1414(a); TILA section 129C(f)(1).
- Disclosure of State law anti-deficiency protections. Dodd-Frank Act section 1414(c);

[139] Effective July 21, 2011, the Dodd-Frank Act generally transferred rulemaking authority for TILA to the Bureau (except for certain rulemaking authority over motor vehicle dealers that remains with the Board). *See* sections 1061 and 1100A of the Dodd-Frank Act.
[140] *See* the Bureau's press release *Consumer Financial Protection Bureau proposes "Know Before You Owe" mortgage forms* (July 9, 2012), available at http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-proposes-know-before-you-owe-mortgage-forms/; the Bureau's blog post *Know Before You Owe: Introducing our proposed mortgage disclosure forms* (July 9, 2012), available at http://www.consumerfinance.gov/blog/know-before-you-owe-introducing-our-proposed-mortgage-disclosure-forms/.

TILA section 129C(g)(2) and (3).

- Disclosure regarding creditor's partial payment policy prior to consummation and, for new creditors, after consummation. Dodd-Frank Act section 1414(d); TILA section 129C(h).
- Disclosure regarding mandatory escrow or impound accounts. Dodd-Frank Act section 1461(a); TILA section 129D(h).
- Disclosure prior to consummation regarding waiver of escrow in connection with the transaction. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(A).
- Disclosure of monthly payment, including escrow, at initial and fully-indexed rate for variable-rate residential mortgage loan transactions. Dodd-Frank Act section 1419; TILA section 128(a)(16).
- Repayment analysis disclosure to include amount of escrow payments for taxes and insurance. Dodd-Frank Act section 1465; TILA section 128(b)(4).
- Disclosure of aggregate amount of settlement charges, amount of charges included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds, and the aggregate amount of other fees or required payments in connection with a residential mortgage loan. Dodd-Frank Act section 1419; TILA section 128(a)(17).
- Disclosure of aggregate amount of mortgage originator fees and the amount of fees paid by the consumer and the creditor. Dodd-Frank Act section 1419; TILA section 128(a)(18).
- Disclosure of total interest as a percentage of principal. Dodd-Frank Act section 1419; TILA section 128(a)(19).

- Optional disclosure of appraisal management company fees. Dodd-Frank Act section 1475; RESPA section 4(c).

The TILA-RESPA Proposal provided for a bifurcated comment process. Comments regarding the proposed amendments to § 1026.1(c) were required to have been received on or before September 7, 2012. For all other proposed amendments and comments pursuant to the Paperwork Reduction Act, comments were required to have been received on or before November 6, 2012.[141]

Affected Title XIV Disclosures. As described above, the Affected Title XIV Disclosures impose certain new disclosure requirements for mortgage transactions. Section 1400(c)(3) of the Dodd-Frank Act[142] provides that, if regulations implementing the Affected Title XIV Disclosures are not issued on the date that is 18 months after the designated transfer date (*i.e.*, by January 21, 2013), the statutory requirements will take effect on that date.

The Bureau provided in the TILA-RESPA Proposal that it believed that implementing integrated disclosures that satisfy the applicable sections of TILA and RESPA and the Affected Title XIV Disclosures would benefit consumers and facilitate compliance for industry with TILA and RESPA. The Bureau provided further that consumers would benefit from a consolidated disclosure that conveys loan terms and costs to consumers in a coordinated way, and industry would benefit by integrating two sets of overlapping disclosures into a single form and by

[141] In its initial *Federal Register* notice, the Bureau also applied the September 7, 2012 deadline to comments on the proposed amendments to the definition of finance charge in § 1026.4. On August 31, 2012, however, the Bureau issued a notice extending the deadline for such comments to November 6, 2012. *See* the Bureau's blog post, *More time for comments on proposed changes to the definition of the finance charge* (August 31, 2012), available at http://www.consumerfinance.gov/blog/more-time-for-comments-on-proposed-changes-to-the-definition-of-the-finance-charge/. The extension was published in the *Federal Register* on September 6, 2012. *See* 77 FR 54843 (Sept. 6, 2012). It did not change the comment period for any other aspects of the TILA-RESPA Proposal, which, as noted above, ended November 6, 2012.

[142] Codified at 15 U.S.C. 1601 note.

avoiding regulatory burden associated with revising systems and practices multiple times. 77 FR 51116, 51133.

However, given the broad scope and complexity of TILA-RESPA Proposal and the 120-day comment period provided, the Bureau stated that it believed a final rule would not be issued by January 21, 2013. The Bureau was concerned that absent a final rule implementing the Affected Title XIV Disclosures, institutions would have to comply with those disclosures beginning January 21, 2013 due to the statutory requirement that any section of Dodd-Frank Act title XIV for which regulations have not been issued by January 21, 2013 are self-effectuating as of that date. The Bureau stated that this likely would result in widely varying approaches to compliance in the absence of regulatory guidance, creating confusion for consumers, and would impose a significant burden on industry. For example, this could result in a consumer who shops for a mortgage loan receiving different disclosures from different creditors. The Bureau noted that it believed such disclosures would not only be unhelpful to consumers, but likely would be confusing since the same disclosures would be provided in widely different ways, and, moreover, implementing the Affected Title XIV Disclosures separately from the TILA-RESPA integrated disclosures would increase compliance costs and burdens on industry. The Bureau also noted in the TILA-RESPA Proposal that nothing in the Dodd-Frank Act itself or its legislative history suggests that Congress contemplated how the separate requirements in titles X and XIV would work together.[143]

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[143] As the Bureau stated in the TILA-RESPA Proposal, certain of the Affected Title XIV Disclosures indicate that Congress did not intend for those disclosure requirements and the TILA-RESPA integrated disclosures to operate independently. For example, Dodd-Frank Act section 1419 amended paragraphs (a)(16) through (19) of TILA section 128 to require additional content on the disclosure provided to consumers within three days of application and in final form at or before consummation. 15 U.S.C. 1638(a)(16) through (19). Pursuant to TILA section 128(b)(1), for residential mortgage transactions, all disclosures required by TILA section 128(a) must be "conspicuously segregated" from all other information provided in connection with the transaction. 15 U.S.C.

Accordingly, in the TILA-RESPA Proposal, the Bureau proposed to implement the Affected Title XIV Disclosures for purposes of Dodd-Frank Act section 1400(c) by providing a temporary exemption from the requirement to comply with such requirements until the TILA-RESPA integrated disclosure requirements become effective.[144] The Bureau proposed the temporary exemption pursuant to the Bureau's authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b). 15 U.S.C. 1604(a); 12 U.S.C. 2617(a); 12 U.S.C. 5532(a); 15 U.S.C. 1601 note. The Bureau explained that fully implementing the Affected Title XIV Disclosures as part of the broader integrated TILA-RESPA rulemaking, rather than issuing rules implementing each requirement individually or allowing those statutory provisions to take effect by operation of law, will improve the overall effectiveness of the integrated disclosures for consumers and reduce burden on industry. The proposed exemption would be, in effect, a delay of the effective date of the Affected Title XIV Disclosures.

The Bureau proposed to delay the Affected Title XIV Disclosures for all transactions to which they would otherwise apply, including to transactions not covered by the proposed integrated disclosure provisions, including open-end credit plans, transactions secured by dwellings that are not real property, and reverse mortgages. The Bureau specifically solicited comment on the exemption's scope and on whether the exemption should sunset on a specific date instead of upon the effective date of the final rule for the integrated disclosures.

Other Title XIV Disclosures. The Bureau proposed to exclude the following Title XIV Disclosures from the list of Affected Title XIV Disclosures in the TILA-RESPA Proposal,

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1638(b)(1). Therefore, the Bureau stated that these sections are directly implicated by the integrated TILA-RESPA requirement. 77 FR 51116, 51133.

[144] *Id.*

stating they would be implemented in separate rulemakings:

- Disclosure regarding notice of reset of hybrid adjustable rate mortgage. Dodd-Frank Act section 1418(a); TILA section 128A(b).
- Loan originator identifier requirement. Dodd-Frank section 1402(a)(2); TILA section 129B(b)(1)(B).
- Consumer notification regarding appraisals for higher-risk mortgages. Dodd-Frank Act section 1471; TILA section 129H(d).
- Consumer notification regarding the right to receive an appraisal copy. Dodd-Frank Act section 1474; ECOA section 701(e)(5).
- Post-Consummation Escrow Cancellation Disclosure. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(B).

The Bureau stated generally that these disclosures were expected to be proposed separately in the summer of 2012 and finalized by January 21, 2013, except for the Post-Consummation Escrow Cancellation Disclosure which the Board had already proposed for comment in its 2011 Escrows Proposal.[145]

As such, the Bureau proposed, as part of the TILA-RESPA Proposal, to provide a temporary exemption from compliance with the Pre-Consummation Escrow Waiver Disclosure in TILA section 129D(j)(1)(A), but not for the Post-Consummation Escrow Cancellation Disclosure in the TILA-RESPA Proposal. Absent the Bureau's issuance of a final rule implementing TILA section 129D(j)(1)(B) by January 21, 2013, the provision would have gone

[145] 77 FR 51116, 51134.

into effect as of such date by operation of law under the Dodd-Frank Act section 1400(c)(3).[146]

Final Rule Delaying Certain Title XIV Disclosures

On November 23, 2012, the Bureau issued a final rule delaying implementation of the Affected Title XIV Disclosures provisions and the Post-Consummation Escrow Cancellation Disclosure by providing an exemption in § 1026.1(c) of Regulation Z for persons from these statutory disclosure requirements (2012 Title XIV Delay Final Rule).[147] The Bureau issued the final rule implementing the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure prior to the statutory provisions becoming self-effectuating on January 21, 2013. Accordingly, persons were not required to comply with these statutory disclosure requirements beginning on January 21, 2013, and are exempted from such requirements until such time as the Bureau removes the exemptions, which the Bureau is doing for certain transactions in this final rule.

The Bureau stated in the 2012 Title XIV Delay Final Rule that it believes that the exemption overall provides a benefit to consumers by facilitating a more effective, consolidated disclosure scheme. Absent an exemption, the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure would have complicated and hindered the mortgage lending process because consumers would have received inconsistent disclosures and, likely, numerous additional pages of Federal disclosures that would not work together in a meaningful, synchronized way. The Bureau also stated it believed that the credit process could be more expensive and complicated if the Affected Title XIV Disclosures and the Post-

[146] As described under part IV below, the Bureau considers an exemption from the disclosure requirement under TILA section 129D(j)(1)(B), such as that proposed in the TILA-RESPA Proposal for the Affected Title XIV Disclosures, to be the issuance of a regulation implementing that provision for purposes of Dodd-Frank Act section 1400(c)(3).

[147] 77 FR 70105 (Nov. 23, 2012).

Consummation Escrow Cancellation Disclosure had taken effect independent of the larger TILA-RESPA integration rulemaking because industry would be required to revise systems and practices multiple times. The Bureau also considered the status of mortgage borrowers in issuing the exemptions, and believes the exemption is appropriate to improve the informed use of credit. The Bureau stated it did not believe that the goal of consumer protection would be undermined by the exemption, because of the risk that layering the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure on top of existing mandated disclosures would lead to consumer confusion. The Bureau stated in the 2012 Title XIV Delay Final Rule that the exemption allows the Bureau to coordinate the changes in a way that improves overall consumer understanding of the disclosures.

The Bureau also stated that although the Post-Consummation Escrow Cancellation Disclosure was not included in the Affected Title XIV Disclosures in the TILA-RESPA Proposal, the Bureau nevertheless received comment requesting that it delay implementation of the disclosure, as described above. Furthermore, as discussed above, the Board received similar requests from commenters on the Board’s 2011 Escrows Proposal, which on July 21, 2011 became the Bureau’s responsibility. The Bureau considered the comments received by the Board and the Bureau and concluded that delaying implementation of the Post-Consummation Escrow Cancellation Disclosure and coordinating such implementation with that of the TILA-RESPA integrated disclosures was in the interest of industry and consumers alike. The Bureau noted that the Dodd-Frank Act statutory requirements for the content of the Pre-Consummation Escrow Waiver Disclosure and the Post-Consummation Escrow Cancellation Disclosure are the same, and the Bureau tested language for the Pre-Consummation Escrow Waiver Disclosure at its consumer testing conducted in connection with the TILA-RESPA Proposal and proposed to integrate this disclosure into the Closing Disclosure (which integrates the final TILA disclosure and the RESPA settlement statement).[148] The Bureau stated that implementing the Post-Consummation Escrow Cancellation Disclosure along with the TILA-RESPA integrated disclosures will allow the Bureau to use feedback it has received from consumer testing conducted prior to the TILA-RESPA Proposal, the comments on the proposal, and any consumer testing conducted subsequent to the proposal to harmonize the content and format of the Post-Consummation Escrow Cancellation Disclosure, the Pre-Consummation Escrow Waiver Disclosure, and the TILA-RESPA integrated disclosures. The Bureau stated that consumers, therefore, would benefit from a more fully integrated and synchronized overall mortgage disclosure scheme, and industry would benefit from a more coordinated implementation of the overall mortgage disclosure scheme mandated by the Dodd-Frank Act and implemented by the Bureau.

As discussed below in the section-by-section analysis of § 1026.1(c), the Bureau is now removing the exemptions for the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure in § 1026.1(c) for the mortgage transactions for which this final rule implements those disclosures. Because § 1026.1(c)(5), as finalized in the 2012 Title XIV Delay Final Rule, exempts persons from the disclosure requirements of the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure, and comment 1(c)(5)-1 clarifies that the exemption is intended to be temporary, lasting only until regulations implementing the integrated disclosures required by sections 1032(f), 1098, and 1100A of the Dodd-Frank Act become mandatory, the Bureau is amending § 1026.1(c)(5) to revoke the temporary exemption for transactions subject to the TILA-RESPA Final Rule, but is retaining the

[148] *See* Kleimann Testing Report.

exclusion for all other transactions subject to the statutory provisions for which requirements have not yet been implemented.

IV. Legal Authority

The final rule was issued on November 20, 2013, in accordance with 12 CFR 1074.1. The Bureau issued this final rule pursuant to its authority under TILA, RESPA, and the Dodd-Frank Act. On July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau all of the HUD Secretary's consumer protection functions relating to RESPA.[149] Accordingly, effective July 21, 2011, the authority of HUD to issue regulations pursuant to RESPA transferred to the Bureau. Section 1061 of the Dodd-Frank Act also transferred to the Bureau the "consumer financial protection functions" previously vested in certain other Federal agencies, including the 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."[150] Title X of the Dodd-Frank Act, including section 1061 of the Dodd-Frank Act, along with TILA, RESPA, and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[151] Accordingly, the Bureau has authority to issue regulations pursuant to TILA and RESPA, including the disclosure requirements added to those statutes by title XIV of the Dodd-Frank Act, as well as title X of the Dodd-Frank Act.

A. The Integrated Disclosure Mandate

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[149] Public Law 111-203, 124 Stat. 1376, section 1061(b)(7); 12 U.S.C. 5581(b)(7).

[150] 12 U.S.C. 5581(a)(1).

[151] 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 and RESPA); Dodd-Frank section 1400(b), 15 U.S.C. 1601 note (defining "enumerated consumer laws" to include certain subtitles and provisions of Title XIV).

Section 1032(f) of the Dodd-Frank Act requires that, "[n]ot later than one year after the designated transfer date [of July 21, 2011], the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under [TILA] and sections 4 and 5 of [RESPA], into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the [Board] and [HUD] carries out the same purpose." 12 U.S.C. 5532(f). In addition, the Dodd-Frank Act amended section 105(b) of TILA and section 4(a) of RESPA to require the integration of the TILA disclosures and the disclosures required by sections 4 and 5 of RESPA.[152] The purpose of the integrated disclosure is to facilitate compliance with the disclosure requirements of TILA and RESPA, and to help the borrower understand the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. Dodd-Frank Act sections 1098, 1100A. The Dodd-Frank Act did not impose on the Bureau a deadline for issuing a final rule to implement the integrated disclosure requirements.

Although Congress imposed this integrated disclosure requirement, it did not harmonize the underlying statutes. In particular, TILA and RESPA establish different timing requirements for disclosing mortgage credit terms and costs to consumers and require that those disclosures be provided by different parties. TILA generally requires that, within three business days of receiving the consumer's application and at least seven business days before consummation of

[152] Section 1100A of the Dodd-Frank Act amended TILA section 105(b) to provide that the "Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law." 15 U.S.C. 1604(b). Section 1098 of the Dodd-Frank amended RESPA section 4(a) to require the Bureau to publish a "single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law." 12 U.S.C. 2603(a).

certain mortgage transactions, creditors must provide consumers a good faith estimate of the costs of credit.[153] TILA section 128(b)(2)(A); 15 U.S.C. 1638(b)(2)(A). If the annual percentage rate that was initially disclosed becomes inaccurate, TILA requires creditors to redisclose the information at least three business days before consummation. TILA section 128(b)(2)(D); 15 U.S.C. 1638(b)(2)(D). These disclosures must be provided in final form at consummation. TILA section 128(b)(2)(B)(ii); 15 U.S.C. 1638(b)(2)(B)(ii). RESPA also requires that the creditor or broker provide consumers with a good faith estimate of settlement charges no later than three business days after receiving the consumer's application. However, unlike TILA, RESPA requires that, at or before settlement, "the person conducting the settlement" (which may or may not be the creditor) provide the consumer with a statement that records all charges imposed upon the consumer in connection with the settlement. RESPA sections 4(b), 5(c); 12 U.S.C. 2603(b), 2604(c).

The Dodd-Frank Act did not reconcile these and other statutory differences. Therefore, to meet the Dodd-Frank Act's express requirement to integrate the disclosures required by TILA and RESPA, the Bureau must do so. Dodd-Frank Act section 1032(f), TILA section 105(b), and RESPA section 4(a) provide the Bureau with authority to issue regulations that reconcile certain provisions of TILA and RESPA to carry out Congress' mandate to integrate the statutory disclosure requirements. For the reasons discussed in this notice, the Bureau is issuing regulations to carry out the requirements of Dodd-Frank Act section 1032(f), TILA section 105(b), and RESPA section 4(a).

B. Other Rulemaking and Exception Authorities

[153] This requirement applies to extensions of credit that are both secured by a dwelling and subject to RESPA. TILA section 128(b)(2)(A); 15 U.S.C. 1638(b)(2)(A).

The final rule also relies on the rulemaking and exception authorities specifically granted to the Bureau by TILA, RESPA, and the Dodd-Frank Act, including the authorities discussed below.

Truth in Lending Act

TILA section 105(a). 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 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). This stated purpose is informed by Congress' finding that "economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit[.]" TILA section 102(a). Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA's purposes.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. However, Dodd-Frank Act section 1100A clarified the Bureau's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain "additional requirements" that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the Bureau's authority to exercise TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a). The Dodd-Frank Act also clarified the Bureau's rulemaking authority over certain high-cost mortgages pursuant to section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the provisions of TILA section 129[154] that apply to the high-cost mortgages referred to in TILA section 103(bb), 15 U.S.C. 1602(bb).

For the reasons discussed in this notice, the Bureau is issuing regulations to carry out the purposes of TILA, including such additional requirements, adjustments, and exceptions as, in the Bureau's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion, or to facilitate compliance. In developing these aspects of the final rule pursuant to its authority under TILA section 105(a), the Bureau has considered the purposes of TILA, including ensuring meaningful disclosures, facilitating consumers' ability to compare credit terms, and helping consumers avoid the uninformed use of credit, and the findings of TILA, including strengthening competition among financial institutions and promoting economic stabilization.

TILA section 105(f). Section 105(f) of TILA, 15 U.S.C. 1604(f), authorizes the Bureau to exempt from all or part of TILA all or part of any class of transactions, other than transactions involving any mortgage described in section 1602(aa) of TILA, for which the Bureau determines

[154] 15 U.S.C. 1639. TILA section 129 contains requirements for certain high-cost mortgages, established by the Home Ownership and Equity Protection Act (HOEPA), which are commonly called HOEPA loans.

that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. In exercising this authority, the Bureau must consider the factors identified in section 105(f) of TILA and publish its rationale at the time it proposes an exemption for public comment. Specifically, the Bureau must consider:

(a) The amount of the loan and whether the disclosures, right of rescission, and other provisions provide a benefit to the consumers who are parties to such transactions, as determined by the Bureau;

(b) The extent to which the requirements of this subchapter complicate, hinder, or make more expensive the credit process for the class of transactions;

(c) The status of the borrower, including—

(1) Any related financial arrangements of the borrower, as determined by the Bureau;

(2) The financial sophistication of the borrower relative to the type of transaction; and

(3) The importance to the borrower of the credit, related supporting property, and coverage under this subchapter, as determined by the Bureau;

(d) Whether the loan is secured by the principal residence of the consumer; and

(e) Whether the goal of consumer protection would be undermined by such an exemption.

For the reasons discussed in this notice, the Bureau is issuing regulations that exempt certain classes of transactions from the requirements of TILA pursuant to its authority under TILA section 105(f). In developing this final rule under TILA section 105(f), the Bureau has considered the relevant factors, published its rationale in the proposed rule, and determined that the exemptions are appropriate.

TILA section 129B(e). Dodd-Frank Act section 1405(a) amended TILA to add new section 129B(e), 15 U.S.C. 1639B(e). That section authorizes the Bureau to prohibit or condition terms, acts, or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary, or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of sections 129B and 129C of TILA, necessary or proper to effectuate the purposes of sections 129B and 129C of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower. In developing rules under TILA section 129B(e), the Bureau has considered whether the rules are in the interest of the borrower, as required by the statute. For the reasons discussed in this notice, the Bureau is issuing portions of this rule pursuant to its authority under TILA section 129B(e).

Real Estate Settlement Procedures Act

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the Bureau to prescribe such rules and regulations and to make such interpretations and grant such reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of RESPA. One purpose of RESPA is to effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs. RESPA section 2(b); 12 U.S.C. 2601(b). In addition, in enacting RESPA, Congress found that consumers are entitled to be "provided with greater and more timely information on the nature and costs of the settlement process and [to be] protected from unnecessarily high settlement charges caused by certain abusive practices in some areas of the country." RESPA section 2(a); 12 U.S.C. 2601(a). In the past, RESPA section 19(a) has served as a broad source of authority to prescribe disclosures and substantive requirements to carry out the purposes of RESPA.

In developing rules under RESPA section 19(a), the Bureau has considered the purposes of RESPA, including to effect certain changes in the settlement process that will result in more effective advance disclosure of settlement costs. For the reasons discussed in this notice, the Bureau is issuing portions of this rule pursuant to its authority under RESPA section 19(a).

Dodd-Frank Act

Dodd-Frank Act section 1021. Section 1021(a) of the Dodd-Frank Act provides that the Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial services and that markets for consumer financial products and services are fair, transparent, and competitive. 12 U.S.C. 5511(a). In addition, section 1021(b) of the Dodd-Frank Act provides that the Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, among other things, with respect to consumer financial products and services: (1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions; (2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; (3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; (4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. 12 U.S.C. 5511(b). Accordingly, in developing this final rule, the Bureau has sought to ensure that it is consistent with the purposes of Dodd-Frank Act section 1021(a) and with the objectives of Dodd-Frank Act section 1021(b), specifically including Dodd-Frank Act section 1021(b)(1) and (3).

Dodd-Frank Act section 1022(b). 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). Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1). 12 U.S.C. 5512(b)(2). As discussed above, TILA and RESPA are Federal consumer financial laws. Accordingly, in adopting this final rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules under TILA, RESPA, and Title X that carry out the purposes and objectives and prevent evasion of those laws. See part VII for a discussion of the Bureau's standards for rulemaking under Dodd-Frank Act section 1022(b)(2).

Dodd-Frank Act section 1032. 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 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 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 developing the final rule 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. *See* parts II and III, above. Moreover, the Bureau has considered the evidence developed through its consumer testing of the integrated disclosures as well as prior testing done by the Board and HUD regarding TILA and RESPA disclosures. See part III for a discussion of the Bureau's consumer testing. For the reasons discussed in this notice, the Bureau is issuing portions of this rule pursuant to its authority under Dodd-Frank Act section 1032(a).

In addition, Dodd-Frank Act section 1032(b)(1) provides that "any final rule prescribed by the Bureau under this [section 1032] requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures." 12 U.S.C. 5532(b)(1). Any model form issued pursuant to that authority shall contain a clear and conspicuous disclosure that, at a minimum, uses plain language that is comprehensible to consumers, contains a clear format and design, such as an easily readable type font, and succinctly explains the information that must be communicated to the consumer. Dodd-Frank Act 1032(b)(2); 12 U.S.C. 5532(b)(2). As discussed in the section-by-section analyses of §§ 1026.37(o) and 1026.38(t), the final rule contains certain model disclosures for transactions subject only to TILA, and not both TILA and RESPA. For the reasons discussed in this notice, the Bureau is issuing these model disclosures pursuant to its authority under Dodd-Frank Act section 1032(b).

Dodd-Frank Act section 1405(b). Section 1405(b) of the Dodd-Frank Act provides that, "[n]otwithstanding any other provision of [title 14 of the Dodd-Frank Act], in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Bureau may, by rule, exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Bureau determines that such exemption or modification is in the interest of consumers and in the public interest." 15 U.S.C. 1601 note. Section 1401 of the Dodd-Frank Act, which amends TILA section 103(cc)(5), 15 U.S.C. 1602(cc)(5), generally defines a residential mortgage loan as any consumer credit transaction that is secured by a mortgage on a dwelling or on residential real property that includes a dwelling other than an open-end credit plan or an extension of credit secured by a consumer's interest in a timeshare plan. Notably, the authority granted by section 1405(b) applies to "disclosure requirements" generally, and is not limited to a specific statute or statutes. Accordingly, Dodd-Frank Act section 1405(b) is a broad source of authority to exempt from or modify the disclosure requirements of TILA and RESPA.

In developing rules for residential mortgage loans under Dodd-Frank Act section 1405(b), the Bureau has considered the purposes of improving consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and the interests of consumers and the public. For the reasons discussed in this notice, the Bureau is issuing portions of this rule pursuant to its authority under Dodd-Frank Act section 1405(b).

V. Section-by-Section Analysis of the Final Rule

Integrated mortgage disclosure requirements implemented in Regulation Z. The Bureau is adopting its proposal to implement this final rule in Regulation Z. TILA's mortgage disclosure requirements are currently implemented in Regulation Z, whereas RESPA's mortgage disclosure requirements are currently implemented in Regulation X. Regulation Z contains detailed regulations and official interpretations regarding disclosures for mortgage transactions, whereas Regulation X largely relies on the RESPA GFE and RESPA settlement statement forms and their instructions. The Bureau proposed to establish the integrated disclosure requirements in Regulation Z, because it believed that the additional detail in Regulation Z facilitates industry's compliance.[155] The proposal included conforming and other amendments to Regulation X.[156]

However, the Bureau solicited comment on whether the level of detail in the proposed regulations and official interpretations (including the number of examples illustrating what is and is not permitted) will make compliance more burdensome and whether the Bureau should adopt a less prescriptive approach in the final rule. While most industry commenters requested that the Bureau add additional detail and illustrations to specific provisions of the final rule, as described in their respective section-by-section analyses, some commenters criticized the level of detail and illustrations in the proposal.

One regional trade association representing credit unions suggested that the Bureau adopt a less prescriptive approach and issue a notice of final rulemaking of a shorter length than the Bureau's notice of proposed rulemaking. One individual industry commenter stated that the Bureau's final rule should only State the regulatory requirements and not include further explanations or guidance; however, the commenter also provided suggestions for specific

[155] For example, the small financial service providers who advised the Small Business Review Panel stated that ambiguity in the application or interpretation of the current RESPA disclosure requirements produces substantial costs in the form of legal fees, staff training, and, for settlement agents, preparing forms differently for different lenders. To address this concern, these providers generally requested that the Bureau provide clear guidance on how to fill out the forms, similar to that currently provided in Regulation Z. *See* Small Business Review Panel Report at 19-20. In addition, the rules and forms adopted in this final rule are intended to meet the requirements of sections 1032(f), 1098, and 1100A of the Dodd-Frank Act that require the Bureau to combine the disclosures under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions. 12 U.S.C. 5532(f), 12 U.S.C. 2603, 15 U.S.C. 1604.

[156] The Bureau is proposing to retain established regulatory terminology in Regulations X and Z for consistency, such as using the term "borrower" in Regulation X and "consumer" in Regulation Z.

guidance and clarifications to include in the final rule. Another individual industry commenter stated that the regulations were not well written, and suggested that the final rule should instruct a software programmer or data entry employee on how to complete the disclosures. An individual consumer commenter stated that the proposal had overly extensive guidance.

As noted above, most industry commenters requested additional detail and clarifications in specific provisions of the final rule. In addition, some industry commenters commented generally on the level of detail. Some commenters specifically stated that the level of detail would be beneficial to industry. For example, a title insurance company commenter stated that, while the level of detail in the proposed regulations and guidance may initially make compliance more burdensome, over the longer term the level of detail will make compliance less burdensome by addressing many situations that will arise and providing guidance and analogies for handling other situations that are not expressly addressed. The commenter also stated that the level of detail will foster greater industry-wide consistency in the implementation of the rule and will help prevent increased costs of compliance consulting which can result from a less detailed approach. In addition, several other industry commenters stated that clear guidance was important for industry, and suggested that the proposal's level of detail is preferred. Many commenters requested still more clarifying examples and guidance with respect to various provisions of the integrated disclosures, as discussed in more detail in relation to the applicable sections below.

In light of the benefits cited by commenters from the level of detail in the proposal and requests for additional guidance and clarifications, as well as the feedback the Bureau received from the Small Business Review Panel regarding the costs faced by small entities from the ambiguity in the current rules and requests for clear guidance in the final rule, the Bureau has determined to maintain a similar level of detail in the final rule as in the proposal, and to provide additional guidance and clarifying examples where appropriate.[157] The Bureau believes that the level of detail and guidance in the final rule will facilitate compliance with the disclosure requirements of TILA and RESPA, which is one of the purposes of the integrated disclosures set forth by the Dodd-Frank Act. *See* Dodd-Frank Act sections 1098 and 1100A.

Liability. TILA provides for a private right of action, with statutory damages for some violations, whereas RESPA does not provide a private right of action related to the RESPA GFE and RESPA settlement statement requirements. Some industry commenters expressed concern that if the final rule implements the combined disclosure requirements in Regulation Z, consumers would bring lawsuits seeking TILA's remedies for RESPA violations. These commenters, which included several trade associations, several title companies, two large banks, and a large non-bank lender, requested that the Bureau specify which provisions of the integrated disclosure rules relate to TILA requirements and which relate to RESPA requirements. One title industry trade association commenter suggested that the Bureau implement the TILA disclosure requirements in Regulation Z and the RESPA disclosure requirements in Regulation X to discourage litigation invoking TILA's liability scheme for RESPA violations.

While the final regulations and official interpretations do not specify which provisions relate to TILA requirements and which relate to RESPA requirements, the section-by-section analysis of the final rule contains a detailed discussion of the statutory authority for each of the integrated disclosure provisions. As stated in part IV, above, the authority for the integrated disclosure provisions is based on specific disclosure mandates in TILA and RESPA, as well as certain rulemaking and exception authorities granted to the Bureau by TILA, RESPA, and the

[157] *See* Small Business Review Panel Report at 19-20.

Dodd-Frank Act. The details of the Bureau's use of such authority are described in the section-by-section analysis. The Bureau believes these detailed discussions of the statutory authority for each of the integrated disclosure provisions provide sufficient guidance for industry, consumers, and the courts regarding the liability issues raised by the commenters.

The Bureau does not believe that implementing the integrated disclosure requirements in two separate regulations is feasible. As noted in the proposed rule and in this part, the Bureau is implementing the integrated disclosure provisions in Regulation Z because it contains detailed regulations regarding disclosures for mortgage transactions, which facilitates compliance. The Bureau believes that an approach that places a portion of the integrated disclosure rules in Regulation Z and a portion in Regulation X would be unworkable and would ultimately result in compliance burden for industry with no apparent benefits for consumers.

Scope of TILA and RESPA. As discussed in detail below with respect to proposed § 1026.19, certain mortgage transactions that are subject to TILA are not subject to RESPA and vice versa. As proposed, the integrated mortgage disclosures would have applied to most closed-end consumer credit transactions secured by real property. Certain types of loans that are currently subject to TILA but not RESPA (construction-only loans and loans secured by vacant land or by 25 or more acres) would have been subject to the proposed integrated disclosure requirements, whereas others (such as mobile home loans and other loans that are secured by a dwelling but not real property) would have remained solely subject to the existing Regulation Z disclosure requirements. Reverse mortgages were excluded from coverage of the proposed integrated disclosures and would therefore have remained subject to the current Regulation X and Z disclosure requirements until the Bureau addressed those unique transactions in a separate, future rulemaking. Finally, consistent with the current rules under TILA, the integrated mortgage disclosures would not have applied to mortgage loans made by persons who are not "creditors" as defined by Regulation Z (such as persons who make five or fewer mortgage loans in a year), although such loans would continue to be subject to RESPA.

The Bureau is adopting the scope of the integrated disclosures as proposed as described in the section-by-section analysis for § 1026.19. Accordingly, reverse mortgage disclosures will continue to be governed by Regulation X. The Bureau proposed revisions to the disclosure provisions of Regulation X in light of this change in scope, as described in more detail below.

A. Regulation X

Section 1024.5 Coverage of RESPA

5(a) Applicability

For the reasons discussed below under § 1024.5(d), the Bureau proposed to use its authority under RESPA section 19(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt certain transactions from the existing RESPA GFE and RESPA settlement statement requirements of Regulation X. The Bureau, therefore, proposed a conforming amendment to § 1024.5(a) to reflect these partial exemptions pursuant to the same authority. The Bureau did not receive any comments on the proposed revisions to § 1024.5(a) and is therefore adopting the revisions to § 1024.5(a) as proposed, with a modification to reflect that proposed § 1024.5(c) is being adopted as § 1024.5(d), as discussed below.

5(b) Exemptions

5(b)(1)

Section 1024.5(b)(1) currently exempts from the coverage of RESPA and Regulation X loans on property of 25 acres or more. The Bureau proposed to exercise its authority under RESPA section 19(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to eliminate this Regulation X exemption to render the TILA and RESPA regimes more consistent. The Bureau believed that most loans that fall into this category are separately exempt under a provision excluding extensions of credit primarily for business, commercial, or agricultural purposes, set forth in § 1024.5(b)(2). In addition, the Bureau believed that this consistency would have improved consumer awareness and understanding of transactions involving residential mortgage loans and, therefore, would have been in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Because it was unclear to the Bureau whether any mortgage loans are exempt based solely on § 1024.5(b)(1), the Bureau solicited comment on the number of loans that may be affected by this aspect of the proposal and any reasons for the continued exemption of loans on property of 25 acres or more.

One non-depository rural lender commenter stated that the exemption for loans on property of 25 acres or more should be retained because approximately 55 percent of its consumer purpose loans did not require a RESPA GFE and 61 percent of its closed-end consumer-purpose loans secured by real property did not require a RESPA settlement statement under this exemption. The commenter gave several examples of consumer purposes for these types of loans, such as loans financing the transfer of property interests pursuant to divorce settlements, cash-out refinancing for nursing home expenses for the borrowers themselves or their parents, and financing the purchase of second homes. Other commenters generally did not express opposition to the proposed elimination of the 25-acres-or-more exemption, but rather requested that the final rule reiterate that the test for coverage for the integrated disclosures should be whether the primary purpose of the loan is for consumer purposes. One industry State trade association stated that consumer purpose loans are structured the same whether secured by 24 or 25 acres or more and have similar costs, and therefore, their members generally do not object to providing the integrated disclosures to all consumer purpose loans secured by real property, regardless of property size. A title insurance company commenter agreed with the Bureau that there is no reason to retain the 25-acres–or-more exemption because most of those loans would also be exempt under the exemption for business, commercial, or agricultural purposes.

Generally, TILA has longstanding requirements for disclosures to be provided in connection with loans secured by real property. Dodd Frank Act sections 1032(f), 1098, and 1100A directed the integration of the TILA and RESPA forms, implicitly authorizing the Bureau to harmonize statutory differences, as discussed above. The Bureau believes that consumers of closed-end credit transactions secured by real property of 25 acres or more should obtain the integrated disclosures provided pursuant to § 1026.19 below. In addition, Congress in section 1032(a) of the Dodd-Frank Act authorized the Bureau to prescribe rules to ensure that the features of any consumer financial 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. 12 U.S.C. 5532(a). The Bureau believes that consumers of consumer-purpose loans secured by property of 25 acres or more should obtain the integrated disclosures, as they would be just as useful to such consumers as to consumers of loans secured by smaller areas of real property. *See* section-by-section analysis of §1026.19 in general, below. The Bureau believes such disclosure is consistent with section 1032(a) of the Dodd-Frank Act. The Bureau therefore exercises its authority under Dodd-Frank Act section 1032(a), RESPA section 19(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to eliminate the exemption for loans secured by property of 25 acres or more in § 1024.5(b)(1) of Regulation X. This amendment will render the TILA and RESPA regimes more consistent, which promotes more effective advance disclosure of settlement costs (which is a purpose of RESPA). In addition, this consistency will improve consumer awareness and understanding of transactions involving residential mortgage loans and is therefore in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

5(d) Partial Exemptions for Certain Mortgage Loans

The Bureau proposed § 1024.5(c) to exempt creditors from certain RESPA requirements for loans subject to the integrated disclosure requirements and also certain federally related mortgage loans that satisfy specified criteria associated with certain housing assistance loan programs for low- and moderate-income persons. Specifically, creditors would be exempt from the requirement to provide the RESPA settlement cost booklet, RESPA GFE, RESPA settlement statement, and application servicing disclosure statement requirements of §§ 1024.6, 1024.7, 1024.8, 1024.10, and 1024.21(b) and (c). The Bureau proposed this exemption under RESPA section 19(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b). This proposed exemption would have cross-referenced proposed § 1026.3(h), which codifies an exemption issued by HUD on October 6, 2010. Under the HUD exemption, lenders need not provide the RESPA GFE and RESPA settlement statement when six prerequisites are satisfied: (1) the loan is secured by a subordinate lien; (2) the loan's purpose is to finance downpayment, closing costs, or similar homebuyer assistance, such as principal or interest subsidies, property rehabilitation assistance, energy efficiency assistance, or foreclosure avoidance or prevention; (3) interest is not charged on the loan; (4) repayment of the loan is forgiven or deferred subject to specified conditions; (5) total settlement costs do not exceed one percent of the loan amount and are limited to fees for recordation, application, and housing counseling; and (6) the loan recipient is provided at or before settlement with a written disclosure of the loan terms, repayment conditions, and costs of the loan.

To facilitate compliance, the Bureau proposed to codify this exemption in Regulations X and Z for the same reasons and under the same authority as cited by HUD. Specifically, HUD invoked its authority under RESPA section 19(a) to grant “reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of [RESPA].” HUD determined that, for transactions meeting the criteria listed above, the RESPA GFE and RESPA settlement statement forms would be difficult to complete in a meaningful way and likely would confuse consumers who received them. Moreover, because of the limited, fixed fees involved with such transactions, the comparison shopping purpose of the RESPA GFE would not be achieved. Finally, the alternative written disclosure required as a prerequisite of the exemption would ensure that consumers understand the loan terms and settlement costs charged.

In addition, the Bureau proposed this exemption based on its authority under Dodd-Frank Act section 1405(b) because the Bureau believed the proposed exemption would improve consumer awareness and understanding of residential mortgage loan transactions of the type discussed above and therefore would be in the interest of consumers and the public. These exemptions would have created consistency with the proposed integrated disclosure requirements under Regulation Z and codified a disclosure exemption previously granted by HUD. However, the exemptions would have retained coverage of affected loans for all other requirements of Regulation X, such as provisions implementing the servicing requirements in RESPA section 6 (other than the application servicing disclosure statement), prohibitions on referral fees and kickbacks in RESPA section 8, and limits on amounts to be deposited in escrow accounts in RESPA section 10.

The Bureau did not receive any comments on proposed § 1024.5(c). However, the

Bureau adopted a regulation on July 10, 2013 that added § 1024.5(c) concerning RESPA's relation to State laws. 78 FR 44686 (July 24, 2013).[158] Accordingly, the Bureau adopts proposed § 1024.5(c) without modification but renumbered as § 1024.5(d).

Section 1024.30 Scope

30(c) Scope of Certain Sections

The Bureau is adopting a modification to § 1024.30(c) to clarify that the servicing disclosure statement requirement of § 1024.33(a) only applies to reverse mortgage transactions, for the reasons discussed in relation to the section-by-section analysis of § 1024.33(a) below.

Section 1024.33 Mortgage Servicing Transfers

33(a) Servicing Disclosure Statement

In the Bureau's 2012 RESPA Mortgage Servicing Proposal, the Bureau proposed to limit the scope of the servicing disclosure statement to closed-end reverse mortgage transactions to conform § 1024.33(a) to the comprehensive amendments to consumer mortgage disclosures proposed by the Bureau in the TILA-RESPA Proposal. Because the Bureau intended to incorporate the servicing disclosure statement requirements of RESPA section 6(a) into the consolidated disclosure forms for the TILA-RESPA Proposal, the Bureau had proposed to limit the scope of the servicing disclosure statement provisions in new § 1024.33 to closed-end reverse mortgage transactions because those transactions would not be covered by the TILA-RESPA Proposal.

After additional consideration, because the TILA-RESPA Proposal would not be finalized until after the 2013 RESPA Mortgage Servicing Final Rule became effective, in the

[158] The regulation recodified the provisions of § 1024.13 as § 1024.5(c) in order to clarify the application of State law provisions concerning the servicing of mortgage loans in the context of RESPA. *See* 78 FR 44686, 44689-90 (July 24, 2013).

2013 RESPA Mortgage Servicing Final Rule the Bureau decided not to finalize the language in proposed § 1024.33(a) that would have limited the scope of the provision to closed-end reverse mortgage transactions. Instead, the Bureau finalized § 1024.33(a) by conforming the scope to "mortgage loans" other than subordinate-lien mortgage loans, as discussed in the section-by-section analysis of § 1024.30(c) of the 2013 RESPA Mortgage Servicing Final Rule. Accordingly, in the 2013 RESPA Mortgage Servicing Final Rule, the Bureau added language to § 1024.33(a) so that applicants for "first-lien mortgage loans" must receive the servicing disclosure statement, as indicated at § 1024.30(c)(1). Thus, applicants for both reverse and forward mortgage loans must receive currently the servicing disclosure statement under Regulation X.

Because the Bureau has incorporated the servicing disclosure statement under RESPA section 6(a) into the Loan Estimate, as described in the section-by-section analysis of § 1026.37(m) below, the Bureau is adopting in this final rule an amendment to § 1024.33(a), which limits the requirement to provide the servicing disclosure statement to reverse mortgage transactions. The Bureau intends this amendment to reflect the requirement that the Loan Estimate include the servicing disclosure statement under § 1026.37(m)(6) for transactions subject to § 1026.19(e), thereby eliminating a duplicative disclosure requirement.

Appendix A—Instructions for Completing HUD–1 and HUD–1A Settlement Statements; Sample HUD–1 and HUD–1A Statements

The Bureau proposed to require creditors to use the integrated Closing Disclosure required by §§ 1026.19(f) and 1026.38 to satisfy the disclosure requirements under RESPA section 4 for closed-end transactions covered by RESPA, except for reverse mortgage transactions. The Bureau recognized in the proposed rule that the manner in which reverse mortgage transactions are disclosed on the RESPA settlement statement (the HUD-1 or HUD-1A) under appendix A to Regulation X is a source of confusion for creditors and settlement agents. HUD attempted to clarify the use of the RESPA settlement statement in reverse mortgage transactions by issuing frequently-asked questions, the HUD RESPA FAQs, the most recent of which was released on April 2, 2010. The Bureau proposed to exercise its authority under RESPA section 19(a) to modify appendix A to Regulation X to incorporate the guidance provided by the HUD RESPA FAQs regarding reverse mortgage loans because, under the proposed rule, the closing of reverse mortgage transactions would have continued to be disclosed using the RESPA settlement statement. The proposed revisions would have been located in the instructions for lines 202, 204, and page 3, loan terms.

The Bureau believed that incorporating this guidance into appendix A to Regulation X would have improved the effectiveness of the disclosures when used for reverse mortgages, thereby reducing industry confusion and advancing the purpose of RESPA to provide more effective advanced disclosure of settlement costs to both the borrower and the seller in the real estate transaction, consistent with RESPA section 19(a).

One industry trade association commenter supported the revisions related to proposed appendix A to Regulation X, but requested that compliance with the modifications be considered optional. The proposed changes to appendix A to Regulation X were intended merely to incorporate the existing disclosure requirements for reverse mortgage transactions as clarified by HUD in the HUD RESPA FAQs. The Bureau believes that making the revisions optional would detract from the intent of clarifying appendix A to Regulation X for reverse mortgage transactions and conflict with the purpose of RESPA to provide more effective advance disclosure of settlement costs. The Bureau did not receive any other comments related to proposed appendix A to Regulation X. Accordingly, the Bureau adopts the revisions to appendix A to Regulation X as proposed.

Appendix B—Illustrations of Requirements of RESPA

Illustration 12 in appendix B to part 1024 provides a factual situation where a mortgage broker provides origination services to submit a loan to a lender for approval. The mortgage broker charges the borrower a uniform fee for the total origination services, as well as a direct up-front charge for reimbursement of credit reporting, appraisal services, or similar charges. To address this factual situation, illustration 12 provides a comment explaining that the mortgage broker's fee must be itemized in the RESPA GFE and on the RESPA settlement statement; other charges that are paid for by the borrower and paid in advance of consummation are listed as paid outside closing on the RESPA settlement statement and reflect the actual provider charge for such services; and any other fee or payment received by the mortgage broker from either the lender or the borrower arising from the initial funding transaction, including a servicing release premium or yield spread premium, is to be noted on the RESPA GFE and listed in the 800 series of the RESPA settlement statement.

Subsequent to the guidance provided in illustration 12, Regulation Z § 1026.36(d)(2) was adopted. Section 1026.36(d)(2) states:

> If any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling: (i) No loan originator shall receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and (ii) No person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) shall pay any compensation to a loan originator,

directly or indirectly, in connection with the transaction.

The last sentence in illustration 12 clearly contemplates the loan originator, a mortgage broker, receiving compensation from the lender as well as the borrower, which therefore describes a factual situation prohibited by § 1026.36(d)(2). Accordingly, for consistency with § 1026.36(d)(2), the Bureau proposed to exercise its authority under RESPA section 19(a) to delete the last sentence of the comment provided in illustration 12 in appendix B to Regulation X.

The Bureau did not receive any comments related to the proposed revision to appendix B to Regulation X. Accordingly, the Bureau adopts the revision to appendix B to Regulation X as proposed for the reasons stated above.

Appendix C— Instructions for Completing Good Faith Estimate (GFE) Form

The Bureau proposed to require creditors to use the integrated Loan Estimate required by §§ 1026.19(e) and 1026.37 to satisfy the disclosure requirements under RESPA section 5 for closed-end transactions covered by RESPA, except for reverse mortgage transactions. The Bureau recognized that the manner in which reverse mortgage transactions are disclosed on the RESPA GFE under appendix C to Regulation X is a source of confusion for creditors and other loan originators. HUD clarified the use of the RESPA GFE in reverse mortgage transactions in the HUD RESPA FAQs. The Bureau proposed to exercise its authority under RESPA section 19(a) to modify appendix C to Regulation X to incorporate the guidance provided by the HUD RESPA FAQs because, under the proposed rule, reverse mortgage transactions would have continued to be disclosed using the RESPA GFE. The proposed revisions would have been found in the instructions for the "Summary of your loan" and "Escrow account information" sections. The Bureau believed that these revisions would have satisfied the purpose of RESPA to provide more effective advance disclosure of settlement costs to both the consumer and the seller in the real estate transaction, consistent with RESPA section 19(a).

One industry trade association commenter supported the changes related to proposed appendix C to Regulation X, but as with the proposed modifications to appendix A to Regulation X discussed above, requested that compliance with the modifications be considered optional. The proposed revisions to appendix C to Regulation X were intended merely to incorporate the existing disclosure requirements for reverse mortgage transactions, as clarified by HUD in the HUD RESPA FAQs. The Bureau believes that making the changes optional would detract from the intent of clarifying appendix C to Regulation X for reverse mortgage transactions and conflict with the purpose of RESPA to provide more effective advance disclosure of settlement costs.

One industry commenter pointed out that as Regulation Z allows that delivery to one consumer is considered to be delivery for all consumers in a transaction, whereas Regulation X requires each applicant receive the GFE. The commenter suggested that Regulation X be amended so it follows the Regulation Z provision for delivery of the RESPA GFE. The proposed rule did not include any substantive modification to the delivery requirements of Regulation X. In addition, given the nature of a reverse mortgage transaction and the potential loss of a residence due to a termination event, the Bureau believes more analysis must be conducted, as stated above, before any modification of the disclosure requirements for reverse mortgages is proposed. The Bureau did not receive any other comments related to proposed appendix C to Regulation X. Accordingly, the Bureau adopts the revisions to appendix C to Regulation X as proposed.

B. Regulation Z

Section 1026.1 Authority, Purpose, Coverage, Organization, Enforcement, and Liability

Statutory Scope

In the TILA-RESPA Proposal, the Bureau proposed conforming amendments to § 1026.1 to reflect the fact that, under the proposal, Regulation Z would implement not only TILA, but also certain provisions of RESPA. To reflect the expanded statutory scope of Regulation Z, the proposed conforming amendments would have revised § 1026.1(a) (authority), (b) (purpose), (d)(5) (organization of subpart E), and (e) (enforcement and liability) to include references to the relevant provisions of RESPA.

The Bureau did not receive comment on this aspect of the proposed rule. The Bureau adopted the proposed changes to § 1026.1(a) in the 2012 Title XIV Delay Final Rule that temporarily exempted creditors from implementing certain Dodd-Frank Act disclosure requirements pending the resolution of the broader rulemaking as discussed below. *See* 77 FR 70105, 70114 (Nov. 23, 2012). The Bureau is now finalizing § 1026.1(b), (d)(5),[159] and (e) as proposed, with a modification to § 1026.1(b) for greater clarity and a technical change to § 1026.1(d)(5) to delete a reference to § 1026.19(g).

1(c) Coverage

The TILA-RESPA Proposal also would have provided a temporary exemption from certain disclosure requirements added to TILA and RESPA by the Dodd-Frank Act. Specifically, the proposal would have exempted persons temporarily from the disclosure requirements of sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129C(h), 129D(h), and 129D(j)(1)(A) of TILA and section 4(c) of RESPA (collectively the

[159] Section 1026.1(d)(5) was also amended by the Bureau's 2013 HOEPA Final Rule to reflect the expanded scope of HOEPA under the Dodd-Frank Act. *See* 78 FR 6856, 6868 (Jan. 31, 2013). Those amendments will take effect on January 10, 2014.

Affected Title XIV Disclosures), until regulations implementing the integrated disclosures required by section 1032(f) of the Dodd-Frank Act take effect.[160] Proposed § 1026.1(c)(5) would have implemented this exemption by stating that no person is required to provide the disclosures required by the statutory provisions listed above. Proposed comment 1(c)(5)-1 would have explained that § 1026.1(c)(5) implements the above-listed provisions of TILA and RESPA added by the Dodd-Frank Act by exempting persons from the disclosure requirements of those sections. The comment would have clarified that the exemptions provided in proposed § 1026.1(c)(5) are intended to be temporary and will apply only until compliance with the regulations implementing the integrated disclosures required by section 1032(f) of the Dodd-Frank Act become mandatory. Proposed comment 1(c)(5)-1 also would have clarified that the exemptions in proposed § 1026.1(c)(5) would not exempt any person from any other requirement of Regulation Z, Regulation X, or of TILA or RESPA.

The Bureau recognized in the TILA-RESPA Proposal that the Affected Title XIV Disclosures varied in scope from, and in some cases were broader in scope than, the proposed integrated disclosures. For example, certain of the Affected Title XIV Disclosures apply to open-end credit plans, transactions secured by dwellings that are not real property, and/or reverse mortgage transactions, which would not have been subject to the integrated disclosure requirements of the proposed rule. At the same time, because the final scope of the integrated disclosures was not known at the time of the proposal, the Bureau chose to delay the Affected Title XIV Disclosures to the fullest extent those requirements could apply under the statutory provisions. The Bureau sought comment on whether the final rule implementing the integrated

[160] 15 U.S.C. 1638(a)(16)-(19), 1638(b)(4), 1639c(f)(1), 1639c(g), 1639c(h), 1639d(h), and 1639d(j)(1)(A); 12 U.S.C. 2604(c); 12 U.S.C. 5532(f).

disclosures should implement the Affected Title XIV Disclosures for transactions not covered by the integrated disclosures, including open-end credit plans, transactions secured by dwellings other than real property, and reverse mortgages.

The TILA-RESPA Proposal provided for a bifurcated comment process, with comments regarding the proposed amendments to § 1026.1(c)(5) receiving a 60-day comment period and all other proposed provisions receiving a 120-day comment period. Pursuant to section 1400(c)(3) of the Dodd-Frank Act, if regulations implementing the Affected Title XIV Disclosures were not issued on the date that is 18 months after the designated date of transfer of TILA and RESPA rulewriting authority to the Bureau (*i.e.*, by January 21, 2013), the statutory requirements would have taken effect on that date. In the TILA-RESPA Proposal, the Bureau stated its belief that implementing integrated disclosures that satisfy the applicable sections of TILA and RESPA, including the Affected Title XIV Disclosures, would benefit consumers and facilitate compliance for industry with TILA and RESPA. The Bureau also stated its belief that consumers would benefit from a consolidated disclosure that conveys loan terms and costs to consumers in a coordinated way and that industry would benefit by integrating two sets of overlapping disclosures into a single form and by avoiding regulatory burden associated with revising systems and practices multiple times. The Bureau was concerned that, absent a final rule implementing the exemptions, the self-executing statutory requirements would have resulted in widely varying approaches to compliance, thereby potentially creating confusion for consumers and imposing significant burden on industry.

For the reasons cited in the TILA-RESPA Proposal, on November 16, 2012, the Bureau issued the 2012 Title XIV Delay Final Rule, adopting, among other provisions, proposed § 1026.1(c)(5), pursuant to its authority under and consistent with TILA section 105(a) and (f), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). *See* 77 FR 70105 (Nov. 23, 2012). As finalized, § 1026.1(c)(5) exempted persons from providing the Affected Title XIV Disclosures. The final rule extended the exemption to apply also to the Post-Consummation Escrow Cancellation Disclosure. The Bureau determined that extending the temporary exemption to the Post-Consummation Escrow Cancellation Disclosure would benefit consumers and industry after evaluating comments the Bureau received requesting that it delay implementation of the disclosure, as well as similar requests received by the Board in response to its 2011 Escrows Proposal. The final rule also adopted comment 1(c)(5)-1, which provided that the exemptions in § 1026.1(c)(5) are intended to be temporary and that the provision does not exempt any person from any other part of TILA, RESPA, or those statutes' implementing regulations. Because the Bureau did not receive any comments seeking to limit the scope of the proposed exemption, the temporary exemptions as adopted applied to all transactions subject to the Affected Title XIV Disclosures. The final rule took effect on November 23, 2012.[161] Accordingly, the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure were implemented for purposes of Dodd-Frank Act section 1400(c)(3) by § 1026.1(c)(5) and did not take effect on January 21, 2013.

The TILA-RESPA Final Rule implements the Affected Title XIV Disclosures and the

[161] Under section 553(d) of the Administrative Procedure Act (APA), the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause and published with the rule. 5 U.S.C. 553(d). The Bureau's final rule provided for a temporary exemption from the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure such that they would not become self-effective on January 21, 2013, and instead would be required at the time the TILA-RESPA integrated disclosures become effective. Therefore, under section 553(d)(1) of the APA, the Bureau published the final rule less than 30 days before its effective date because it was a substantive rule which grants or recognizes an exemption or relieves a restriction. 5 U.S.C. 553(d)(1).

Post-Consummation Escrow Cancellation Disclosure for consumer credit transactions secured by a first lien on a consumer's principal dwelling (other than a consumer credit transaction under an open-end credit plan or a reverse mortgage). The Bureau is now amending § 1026.1(c)(5) to revoke the temporary exemption for transactions subject to the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure as implemented by the TILA-RESPA Final Rule: § 1026.19(e) and (f) of the TILA-RESPA Final Rule implements sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129D(h), and 129D(j)(1)(A) of TILA; § 1026.20(e) implements section 129D(j)(1)(B) of TILA; § 1026.39(d)(5) implements section 129C(h) of TILA; and section 4(c) of RESPA. Accordingly, the temporary exemption for those transactions that are subject to § 1026.19(e) and (f) is no longer necessary. However, if the Bureau were to revoke the temporary exemption for all transactions that are not covered by the final rule, the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure would become required for open-end credit plans, transactions secured by dwellings that are not real property, and reverse mortgages.

The Bureau received several comments from industry objecting to this result. For example, a national trade association representing the reverse mortgages industry commented in support of continuing to exempt reverse mortgages from the Affected Title XIV Disclosures. In addition, a national trade association representing banks and bank holding companies that provide retail financial services commented that the exemption should apply to the fullest extent provided under the statute, and not be limited to loans that are subject to the TILA-RESPA integrated disclosures. The Bureau considered these comments, and was persuaded that the exemption should continue to apply for all other transactions subject to the statutory provisions for which requirements have not yet been implemented. Accordingly, the final rule provides that, except in transactions subject to the integrated disclosure requirements in § 1026.19(e) and (f), no person is required to provide the disclosures required by sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129D(h), or 129D(j)(1)(A) of TILA, section 4(c) of RESPA, or the disclosure required prior to settlement by section 129C(h) of TILA. Final § 1026.1(c)(5) also provides that, except in transactions subject to the Post-Consummation Escrow Cancellation Disclosure requirements in § 1026.20(e), no person is required to provide the disclosures required by section 129D(j)(1)(B) of TILA. Lastly, the final rule provides that, except in transactions subject to the partial payment disclosure requirements in § 1026.39(d)(5), no person becoming a creditor with respect to an existing residential mortgage loan is required to provide the disclosure required by section 129C(h) of TILA.

The Bureau is modifying comment 1(c)(5)-1 to clarify that the exemptions from the disclosure requirements only apply to certain mortgage transactions for which the disclosures are not otherwise implemented in Regulation Z. The comment sets forth a list of the transactions for which the disclosures are required under Regulation Z. The Bureau is no longer referring to the exemption as a temporary exemption in the commentary as that term was used primarily to refer to the transactions that would be subject to the integrated disclosure requirements under the TILA-RESPA Proposal.

Specifically, the comment clarifies that §§ 1026.37 and 1026.38 implement sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129D(h), and 129D(j)(1)(A) of TILA and section 4(c) of RESPA for transactions subject to § 1026.19(e) and (f). Section 1026.38(l)(5) implements the disclosure requirements of section 129C(h) of TILA for transactions subject to § 1026.19(f), and § 1026.39(d)(5) implements the disclosure requirements of section 129C(h) of TILA for transactions subject to § 1026.39(d)(5). Section 1026.20(e) implements the disclosure requirements of section 129D(j)(1)(B) of TILA for transactions subject to § 1026.20(e).

The details of the regulatory implementation of the statutory requirements are discussed below, under the applicable sections of Regulation Z. For a discussion of the Bureau's plans to implement integrated disclosures for open-end mortgage transactions, dwellings not secured by real property, and reverse mortgage transactions that are not covered by the TILA-RESPA Final Rule, see the section-by-section analysis of § 1026.19.

1(d) Organization

1(d)(5)

As discussed in part I above, the Bureau is adopting rules and disclosures that combine the pre-consummation disclosure requirements of TILA and sections 4 and 5 of RESPA. The Dodd-Frank Act does not impose a deadline for issuing final rules and disclosures in connection with its mandate to integrate disclosure requirements or provide a specific amount of time for entities subject to those rules to come into compliance. As also discussed in part II.E above, the Dodd-Frank Act establishes two goals for the TILA-RESPA mortgage disclosure integration: to improve consumer understanding of mortgage loan transactions; and to facilitate industry compliance with TILA and RESPA. Dodd-Frank Act sections 1098 and 1100A. In addition, TILA section 105(d) generally provides that a regulation requiring any disclosure that differs from the disclosures previously required shall have an effective date no earlier than "that October 1 which follows by at least six months the date of promulgation," except that the Bureau may at its discretion lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements. 15 U.S.C. 1604(d). The Bureau must balance these statutory objectives and requirements in considering the length of the implementation period.

As described in part VI below, the final rule applies to transactions for which the creditor or mortgage broker receives an application on or after August 1, 2015, with the exception of new § 1026.19(e)(2), and the amendments to § 1026.28(a)(1) and the commentary to § 1026.29, which become effective on that date without respect to whether an application has been received on that date. The Bureau is adding comment 1(d)(5)-1 to provide clarity regarding the application of the effective date to transactions covered by the final rule. The comment summarizes the effective date, clarifies that §§ 1026.19(e)(2), 1026.28, and comments 29(a)-2 and -4 in the final rule become effective on August 1, 2015, and sets forth examples to illustrate the application of the effective date for the final rule. The Bureau believes this comment will facilitate compliance with the final rule, which is one of the purposes of the integrated disclosures, as discussed above.

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(3) Application

The Bureau's Proposal

In the TILA-RESPA Proposal, the Bureau proposed to revise the current definition of the term "application" that applies to the RESPA GFE and early TILA disclosure. Under the final rule, receipt of an "application" triggers a creditor's obligation to provide the Loan Estimate within three business days. Specifically, the Bureau would have revised the definition of application to remove the seventh "catch-all" element of the current definition under 12 CFR 1024.2(b), that is, "any other information deemed necessary by the loan originator." The Bureau believed that deleting this element from the definition would enable consumers to receive the Loan Estimate earlier. The proposed definition would help ensure that consumers have information on the cost of credit while they have bargaining power to negotiate for better terms and time to compare other financing options.

Currently, although neither TILA nor RESPA defines the term "application," section 1024.2(b) of Regulation X defines application as "the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator." 12 CFR 1024.2(b). Regulation Z does not define this term, but instead provides that creditors may rely on the Regulation X definition of application for purposes of the provision of the early TILA disclosure. *See* § 1026.19(a)(1)(i) and comment 19(a)(1)(i)-3. The inclusion of the seventh "catch-all" element in the definition in Regulation X was adopted in response to, among other things, concerns that a narrow definition of "application" might inhibit preliminary underwriting. HUD's 2008 RESPA Final Rule, 73 FR 68210-11.

The Bureau's proposed definition of application would have consisted of two parts. First, the Bureau proposed to add § 1026.2(a)(3)(i) to define application as the submission of a consumer's financial information for purposes of obtaining an extension of credit. This would have established a broad definition of application for all transactions covered by Regulation Z, not just closed-end mortgage loans. Second, the Bureau proposed to add § 1026.2(a)(3)(ii) to provide that an application consists of six pieces of information, except for purposes of subpart B (open-end loans), subpart F (student loans), and subpart G (special rules for credit card accounts and open-end credit offered to college students). The proposed six pieces of information were the consumer's name, income, social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. The Bureau stated in the proposal that these items of information had an established significance in the context of closed-end loans secured by real property, but could be less significant or even inapplicable to other types of credit. Thus, this definition limiting the term application to collection of these six pieces of information would not have been applied to subpart B, subpart F, and subpart G.

Proposed comment 2(a)(3)-1 would have explained that the submission may be in written or electronic format and includes a written record of an oral application. The proposed comment would have also explained that the definition does not prevent a creditor from collecting whatever additional information it deems necessary in connection with the request for the extension of credit; however, once a creditor has received the six pieces of information listed in § 1026.2(a)(3)(ii), the creditor has received an application for purposes of § 1026.2(a)(3)(ii). The proposed comment also would have provided examples of this requirement.

Proposed comment 2(a)(3)-2 would have explained that if a consumer does not have a social security number, the creditor may instead request whatever unique identifier the creditor uses to obtain a credit report. For illustrative purposes, the proposed comment would have clarified that a creditor has obtained a social security number to obtain a credit report for purposes of § 1026.2(a)(3)(ii) if the creditor collects a Tax Identification Number from a consumer who does not have a social security number, such as a foreign national. The Bureau stated in the proposal that the comment would be consistent with guidance provided by HUD in the HUD RESPA FAQs p. 7, #14 (“GFE-General”).

Proposed comment 2(a)(3)-3 would have clarified that the creditor’s receipt of a credit report fee does not affect whether an application has been received. It would have stated that

§ 1026.19(a)(1)(iii) permits the imposition of a fee to obtain the consumer's credit history prior to the delivery of the disclosures required under § 1026.19(a)(1)(i), and that § 1026.19(e)(2)(i)(B) permits the imposition of a fee to obtain the consumer's credit report prior to the delivery of the disclosures required under § 1026.19(e)(1)(i). The proposed comment would have also explained that whether, or when, such fees are received is irrelevant for the purposes of the definition in § 1026.2(a)(3) and the timing requirements in § 1026.19(a)(1)(i) and (e)(1)(iii). The proposed comment would also have provided an example of this provision.

As noted above, the Bureau believed that one primary purpose of the integrated Loan Estimate is to inform consumers of the cost of credit when they have bargaining power to negotiate for better terms and time to compare other financing options. While the Bureau believed that creditors should be able to collect information in addition to the six specific items of information set forth in the current definition of application, the Bureau was concerned that the catch-all item in the current definition may permit creditors to delay providing consumers with the integrated Loan Estimate, at a point when the consumer has much less opportunity to negotiate or compare other options. The Bureau stated that it did not believe that this principle conflicted with the creditor's critical need to be able to collect the information necessary to originate loans in a safe and sound manner, and that the proposed definition of application would not define or limit underwriting; it instead would establish a point in time at which disclosure obligations would begin.

Based on this premise, the Bureau stated that the proposed definition of application should facilitate consumers' ability to receive reliable estimates early in the loan process, but should not restrict a creditor's ability to determine which information is necessary for sound underwriting, because creditors would be able to continue to collect whatever additional information, in the creditor's view, is necessary for underwriting the consumer's loan application after receiving the six specific items of information that constitute an application under proposed § 1026.2(a)(3)(ii). It further stated that removing the catch-all item from the current definition could ensure that the disclosures are both received early in the loan process and based on the information most critical to providing reliable estimates. The Bureau also stated that creditors would be able to collect whatever information is, in the creditor's view, necessary for a reasonably reliable estimate, provided that it collects the additional information prior to collecting the six pieces of information specified in proposed § 1026.2(a)(3)(ii). The Bureau acknowledged in the proposal that creditors could strategically order information collection in a manner that best suits the needs of the creditor. But the Bureau believed that even if the creditor did so, the proposed definition would still be better than the current definition in facilitating consumers' ability to receive reliable estimates early in the origination process. The Bureau also believed that the proposed change to the definition could facilitate consumer shopping because it could ensure that consumers would not be required to disclose sensitive information, such as the consumer's social security number or income, until after the creditor collects less sensitive information. The more sensitive information the consumer provides, the more the consumer may feel committed to a loan offer and be less likely to continue shopping. The Bureau therefore proposed to remove the catch-all item, but believed that the proposal preserved creditors' ability to collect any additional necessary information, which it believed would strike the appropriate balance between the needs of consumers and the needs of industry.

The Bureau also concluded that the proposed approach would dovetail with the requirements of proposed § 1026.19(e), which establishes limitations on fee increases for the purposes of determining good faith but also establishes exceptions to permit changes that are based on changes in the information the creditor relied on in disclosing the estimated loan costs. Thus, the Bureau stated that the proposed definition of application, which would have required creditors to collect any additional information prior to collecting the six pieces of information specified in proposed § 1026.2(a)(3)(ii), would maintain the flexibility provided by the current definition of application in deciding which additional information is necessary for providing estimates. The Bureau stated its belief that if a creditor chooses to collect a consumer's combined liability information prior to collecting the six pieces of information specified in § 1026.2(a)(3)(ii), the disclosures provided pursuant to § 1026.19(e) may reflect such information.

The Bureau also noted in the proposal that it received feedback, including a comment received in response to the 2011 Streamlining RFI, requesting a single definition of application under Regulation Z, Regulation B, and Regulation C. Regulation B implements the Equal Credit Opportunity Act (ECOA), and Regulation C implements the Home Mortgage Disclosure Act (HMDA). The Bureau stated in the proposal that while it recognized the potential consistency benefits of a single definition of application, it believed that the proposed definition of application would provide important benefits to consumers in the context of closed-end loans secured by real property.

During the Small Business Review Panel process, several small entity representatives expressed concern about eliminating the catch-all item from the definition of application currently under Regulation X. *See* Small Business Review Panel Report at 33-34, 49, and 67. Based on this feedback and consistent with the recommendation of the Small Business Review Panel, the Bureau solicited comment on what, if any, additional specific information beyond the six items included under the proposed definition of application is needed to provide a reasonably accurate Loan Estimate.

Comments

In general. Commenters representing a wide range of the mortgage origination industry opposed the removal of the catch-all item from the definition of application. In contrast, the only consumer advocacy group to comment on this aspect of the proposal expressed support for the proposed definition of application.

A national fair housing consumer advocacy group asserted that the current definition of application, because of its lack of uniformity, may create confusion for consumers. The commenter stated that predatory mortgage brokers and loan originators in the past have depended in part on the confusing nature of the loan application process to make unaffordable and unsustainable loans to minorities. The commenter asserted that the catch-all item in the current definition of application was vague and supported its removal from the definition. The commenter suggested, however, that the Bureau should move from commentary into the regulation itself the statement that a creditor that has collected a Tax Identification Number will be deemed to have obtained a social security number to obtain a credit report, for purposes of § 1026.2(a)(3)(ii).The commenter asserted that this change would reduce instances of misinformation or discrimination on the basis of race, color, and national origin by creditors.

Industry commenters opposed the removal of the catch-all item from the definition of application, even though some industry stakeholders also believed that the catch-all item was vague. For example, a national trade association representing credit unions requested that if the Bureau retains the current definition of application, it provide further guidance on what information is included in "any other information deemed necessary by the lender" so that credit unions could have a clear understanding of the kinds of information they may collect before issuing a Loan Estimate. Commenters' specific concerns regarding the proposed definition are discussed in more detail below.

Removal of the catch-all item. Many commenters asserted that without the catch-all item, creditors would not be able to obtain information critical to their ability to issue reliable and meaningful Loan Estimates. These commenters stated that the catch-all item currently permits creditors to collect information that could significantly impact loan and closing costs, loan pricing in the secondary market, and the underwriting decisions they make. Many commenters expressed the concern that without the ability to collect such information, they would have to follow up with revised Loan Estimates as they receive additional information.

However, there was no consensus among commenters with respect to what additional specific information beyond the six items included under the proposed definition of application is needed. A number of industry commenters asserted that the loan product must be part of the definition of application, or otherwise they would not know whether the rule would require or permit them to issue more than one Loan Estimate. Other commenters asserted that the definition of application must also include occupancy status, loan purpose, the loan's term, and, for purchase transactions, the sale price of the property the consumer is interested in. In joint comments, two State credit union trade associations asserted that creditors are required to collect information on loan purpose to comply with the Bank Secrecy Act of 1970 and HMDA. Credit union commenters and their trade associations also asserted that credit union membership is information credit unions must collect to process an application.

Several industry commenters, comprising mostly national trade associations representing banks and non-bank mortgage lenders, provided a list of seventeen pieces of information that, according to the commenters, significantly impact loan costs. A State manufactured housing trade association and a large non-depository manufactured housing lender asserted that creditors making such loans must be able to collect information about whether the home will be situated on leased land or on land that will secure the loan because the distinction would determine whether the obligation to provide the Loan Estimate disclosures applies to the creditor. A mortgage company commenter asserted that credit score, not just the consumer's social security number to obtain the score, should be included in the definition of application because the loan terms offered to a consumer depend on the consumer's credit score.

The comments also stated that some creditors require consumers to provide a copy of the purchase and sale contract as part of the application process. For example, a community bank commenter stated that it currently requires the purchase and sale contract as part of applications to help determine whether the buyer or seller is responsible for various costs and to identify the sale price. Another large bank commenter stated that a purchase and sale contract is necessary to determine the sales price. The community bank commenter stated that the regulations must allow creditors to minimize the burden of redisclosure, and that the bank's ability to request the purchase and sale contract reduces such burden. A State association of buyer's real estate agents, however, expressed concern that the lender practice of requiring a purchase and sale contract does not give consumers enough time to shop for a mortgage loan and must be changed.

Impact on industry. Many commenters expressed concern about compliance burden and implementation costs. Commenters stated that they would have to change their application process so that they could collect the information they need before, or at the same time as, they collect the six specific pieces of information that would constitute an application under the proposal. Some commenters asserted that even if a creditor could structure its application process to collect the additional information before collecting the six specific pieces of information that would make up the application, situations might arise, particularly with applications submitted through the internet or applications submitted by mail, where consumers submit the six specific pieces of information, but not the additional information the creditor deems critical to providing accurate and reliable Loan Estimates.

Some commenters, including a large bank commenter and national trade associations representing large banks and large mortgage finance companies, sought clarification on how creditors should treat consumer information they have retained due to prior or existing customer relationships. One of these commenters asked if a creditor would be considered to have received an application if a consumer starts filling out a mortgage application form online, provides the six pieces of information that make up the definition of application, but then saves the mortgage application form to complete at a later time. Some commenters asserted that the risk of having to issue Loan Estimates upon receiving applications that are complete under the Regulation Z definition of application, but that are not complete in the creditor's determination, would be greater for creditors that use independent mortgage brokers.

A number of commenters expressed concern about the interaction among the proposed definition of application, the proposed change to the definition of business day for purposes of determining the original Loan Estimate delivery requirement, and the proposed tightening of the current tolerance rules establishing limitations on fee increases for certain settlement costs. These commenters believed that these changes together would require a creditor to provide a Loan Estimate subject to stricter tolerances in a shorter period of time, with less information than it could currently rely on. A national trade association representing mortgage bankers asserted that creditors may increase their origination costs and estimate third-party charges at higher levels to manage the risk of providing estimates in response to the combined regulatory impact.

Some commenters asserted that changing the definition of application may not have a significant impact on a creditor's ability to delay provision of the Loan Estimate, because a creditor could simply sequence its application process to delay collection of some or all of the six pieces of information included under the new definition of application. Some commenters noted that they were not aware of any issues that have arisen since the current definition of application became effective in 2010 that would lead the Bureau to conclude that the proposed modification was necessary. A trade association representing large banks observed that HUD had previously proposed to require lenders to provide the RESPA GFE upon the receipt of the six items of specific information that would constitute the proposed definition of application, but after reviewing the comments, HUD added the catch-all item to the definition of application.

Some commenters expressed concern that, because the proposal would have required creditors to honor the charges disclosed on a Loan Estimate for ten business days after providing it, creditors would either be forced to accept lower fees disclosed when necessary information is missing or be required to provide revised Loan Estimates to charge the consumer the actual cost of a settlement service. A national trade association representing large bank creditors stated that the proposed definition could reduce the number of rate locks offered at application because creditors may not want to provide such a commitment without information they deem necessary. A large bank commenter asserted that the proposed definition of application may restrict a creditor's ability and reduce the creditor's willingness to provide pre-qualification and web-based home shopping services because currently, when using those services, consumers often provide the six pieces of information that would have constituted an application under the proposal. A national trade association representing banks asserted that a consumer should be allowed to provide the six specific items of information to receive pre-application worksheets, without also triggering the obligation for the creditor to issue a Loan Estimate.

A national trade association representing community-based mortgage bankers asserted that creditors need the flexibility to postpone the issuance of the Loan Estimate to those consumers who only want non-binding pre-application worksheets. A mortgage broker commenter asserted that there should be two definitions of application: one definition to trigger the obligation to provide pre-qualification worksheets, and a different definition to trigger the obligation to issue a Loan Estimate, which should retain the catch-all item or be the same as the definition used in Regulation B.

Some commenters expressed concern that the six items of information that constitute the proposed definition of application would not be adequate for a creditor to consider for ability-to-repay purposes, because creditors must verify certain borrower information to comply with those requirements. Several commenters, including national trade associations representing banks and consumer mortgage companies, additionally requested clarification that the proposed definition of application applies only to Regulation Z, and not to regulations implementing ECOA, HMDA, and the Fair Credit Reporting Act (FCRA). Some commenters expressed a desire for the Bureau to streamline the definition of application so that one definition can be consistently applied across those regulations and Regulation Z. A large-bank trade association expressed concern that adopting the proposed definition of application would add regulatory complexity because the definition would be different from the definitions of application under regulations implementing ECOA and HMDA at a time when banks are struggling to comply with other Dodd-Frank Act requirements.

The SBA stated that the Bureau should not remove the catch-all item from the definition of application because the small entity representatives that participated in the Bureau's Small

Business Panel Review process had mixed reactions to the proposed removal of the catch-all item. It additionally suggested that the Bureau should remove "property address" from the list of six specific items that would make up the definition of application. The SBA asserted that the requirement would be problematic based on its consultation with industry representatives and based on the suggestion made by a national trade association representing community banks in connection with the Small Business Review Panel process. The trade association commenter asserted that the "property address" should be an optional item in the definition of application for purchase transactions because the change would enable the consumer to shop for a mortgage loan based on a regulated document, the Loan Estimate, rather than unregulated pre-application worksheets. The commenter made the same assertion in the comment letter it submitted in response to the TILA-RESPA Proposal.

An individual industry commenter echoed SBA's suggestion with respect to the property address. The commenter asserted that the definition of application should be defined as having been received when the creditor has enough information to issue a pre-approval letter, or submit the loan for pre-approval, but that the pre-approval letter must not bind the creditor.

Final Rule

The Bureau has considered the comments but believes that the purpose of the Loan Estimate with respect to consumers that was set forth by the Dodd-Frank Act (*see* Dodd-Frank Act sections 1098 and 1100A), to aid consumer understanding of the mortgage loan transaction, is better served by removing the catch-all item from the definition of "application." The Bureau understands that the removal of the seventh catch-all item from the definition may not have a substantial impact on moving the issuance of the Loan Estimate earlier in the transaction. It is apparent from the comments received that many creditors would sequence the information they receive to obtain information they deem necessary in addition to the six items in the definition of "application" before receipt of all six items. However, the Bureau believes that there are other important benefits that will be achieved from a definition of application that only includes the six specific items and not the seventh open-ended catch-all item.

Under the current definition of application under Regulation X, creditors decide when to provide the RESPA GFE and early TILA disclosure based on their own definition of what information is necessary for an application. The Bureau does not have evidence of creditors systematically using the catch-all item after receiving the six items in the definition of application to delay issuance of the RESPA GFE and the early TILA disclosure after receipt of the six items. However, it is apparent from the comments received that creditors use this catch-all item in the current definition of application to obtain additional information after receiving the six specific items in the definition of application. Accordingly, consumers cannot ascertain the point in time when they are entitled to receive the Loan Estimate on which they can rely.

The Bureau believes that the final rule, under which consumers must receive a Loan Estimate after submitting an application that clearly presents the estimated loan terms and costs will provide a significant benefit to consumers by enabling them to shop for different financing options with clear, reliable estimates. Indeed, as described in the section-by-section analysis of § 1026.19(e)(2)(ii) below, the final rule requires a statement on pre-disclosure estimates provided to consumers informing them that the estimated loan terms and costs can be higher, and to "Get an official Loan Estimate before choosing a loan." Accordingly, to ensure that consumers understand how to obtain a Loan Estimate, the Bureau believes that consumers should be able to discern the point of time in the application process of the transaction at which the creditor is required to provide them with one. The Bureau believes that the fact that under the current definition of application creditors can obtain any additional information past the point of receipt of the six items conflicts with the ability of consumers to understand this aspect of their transaction.

By providing that the submission of six specific items of information constitutes an application, the final rule provides a clear point in time for consumers at which the creditor can no longer delay issuance of the Loan Estimate. Accordingly, the Bureau believes that the definition of application in the final rule will result in consumers having a better understanding of the application process of the transaction, and of how to obtain the Loan Estimate, as directed by the statement required under § 1026.19(e)(2)(ii). The Bureau believes a uniform, bright line definition of application will provide this consumer benefit. With one standard, objective definition of application across all creditors, consumers will more easily understand when a creditor is required to provide them with the Loan Estimate. The Bureau believes consumer understanding can be further enhanced through a consumer education initiative regarding the information the consumer should provide to receive a Loan Estimate, and regarding the reliability of the Loan Estimate. In addition, the Bureau believes a single bright-line definition of application across all creditors will facilitate compliance by industry and supervision by Federal and State regulatory agencies.

The Bureau does not believe that the catch-all element is a necessary component of the definition of application. The final rule permits creditors to collect the information they need to give a reliable estimate before they complete collection of the six items of information that constitute an application. As discussed above, some industry commenters noted that aspect of the Bureau's proposed definition when they asserted that the definition of application may not have a significant impact on a creditor's ability to delay provision of the Loan Estimate, because the creditor could simply sequence its application process to delay collection of some or all of the six pieces of information that would make up the definition of application. Such comments reveal that the catch-all element does not need to be part of the definition of application because creditors do not need it to collect additional information from consumers. In addition, the final rule does not prevent creditors from collecting additional information after they receive the six specific pieces of information for underwriting purposes.

The Bureau also believes that it is unnecessary to add specific items to the definition of application. The fact that the final rule permits creditors to collect the information they need to give a reliable estimate before they complete collecting the six items of information that constitute an application means that each creditor is free to request the particular pieces of information it needs before, or at the same time as the creditor collects the six pieces of information. In addition, commenters did not uniformly suggest particular items to add to the definition. Because creditors can collect the additional information they believe is necessary with this revised definition of application, the Bureau believes that it is unnecessary to add new items to the definition of application to replace the catch-all item, as requested by some industry commenters.

The Bureau does not believe that the deletion of the catch-all item will cause creditors to issue a large number of revised Loan Estimates that would create consumer confusion and information overload. The final rule permits creditors to sequence the application process to gather additional items of information, including the potential loan product a consumer is considering, which some creditors assert are needed to provide reliable estimates. This reduces the likelihood of redisclosures. For similar reasons, creditors should not need to increase their origination costs, over-estimate third-party fees, or reduce rate lock offers. To be sure, the final rule may result in some consumers receiving multiple Loan Estimates concurrently with respect to multiple loan products the consumer is considering. The Bureau does not believe, however, that this will cause confusion. On the contrary, the Bureau believes that receiving multiple Loan Estimates furthers the goal of facilitating consumer shopping. Further, the Bureau believes that it is better that consumers receive Loan Estimates that are subject to the good faith requirements of § 1026.19(e)(3) and that are subject to the standard or model format requirements of § 1026.37(o) than that they receive pre-disclosure estimates, which are not subject to those requirements.

Pre-qualification services. The Bureau also does not believe that the definition of application adopted in this final rule will discourage creditors from providing pre-approval, pre-qualification, or internet-based home-shopping services. The Bureau believes that competition among creditors for consumers will be an effective countervailing force against any such disincentive. Additionally, the Bureau does not believe that the definition of application will restrict creditors' ability to provide pre-qualification cost estimates or grant pre-approvals. The Bureau believes that creditors could provide pre-qualification estimates and grant pre-approvals without obtaining all of the six specific items of information that make up the definition of application. Specifically, the Bureau believes that there is little need for creditors to gather specific information about the loan transaction, such as the property address or loan amount sought, to make pre-qualification estimates because pre-qualification estimates and pre-approvals are not subject to the tolerance rules in § 1026.19(e)(3) and are generally for a range of loan amounts and property values. In fact, comments made by a national trade association representing community banks asked that the Bureau designate "property address" as an optional item in the definition of application for purchase transactions. This suggests to the Bureau that creditors may not need the "property address" to issue pre-qualification estimates.

Industry compliance. The Bureau considered industry commenters' concern that regulatory burden would increase because the final rule would change (i) the definition of business day to include Saturday as a business day for the original Loan Estimate delivery requirement; (ii) the tolerance rules, and (iii) the definition of application. In response to these concerns, the Bureau has decided to use the general definition of business day in Regulation Z for the integrated Loan Estimate delivery requirement. See the section-by-section analysis of § 1026.2(a)(6). Further, the Bureau is addressing concerns about burden by retaining the six exceptions to the general rule that certain settlement charges may not increase from the amounts originally disclosed to the consumer under § 1026.19(e)(1)(i), including exceptions based on the information the creditor relied on in disclosing the estimated loan costs. See the section-by-section analysis of § 1026.19(e)(3)(iv).

As noted above, a number of commenters expressed concerns about compliance with other regulations. The definition being adopted today does not change the current definitions of application under Regulations B and C. The Bureau recognizes the potential benefits of a single definition of application, including reduced regulatory burden. However, the definition of application in this final rule determines when consumers must be given disclosures that enable them to shop for and compare different loan and settlement cost options. The definition of application in this final rule serves a different purpose than the definition of application in Regulations B and C. "Application" as defined by this final rule triggers a creditor's obligation to provide disclosures to aid consumers in shopping for and understanding the cost of credit and settlement. On the other hand, a creditor's receipt of an application under Regulation B triggers a creditor's duty to make a credit decision and notify the borrower within a specified time frame.

Under Regulation C, receipt of an application triggers a duty to collect and report information on the disposition of that application and on other aspects of the transaction as well as the applicant's characteristics. Accordingly, the Bureau is not expanding the definition of application adopted in this final rule to regulations that implement ECOA, FCRA, and HMDA, or vice versa. However, the Bureau will continue to consider the comments received on this topic as it evaluates further follow up to the 2011 Streamlining RFI.

With respect to the concern that the definition of application may make it more difficult to comply with other regulatory obligations, given the flexibility the creditor will continue to have under this final rule to sequence the information it collects, there is little need to delay issuance of the Loan Estimate to comply with other regulations. Regulation X currently prohibits creditors from requiring the submission of verifying information as a condition of issuing the RESPA GFE. The final rule prohibits creditors from requiring the submission of verifying information as a condition to issuing a Loan Estimate, as discussed below in the section-by-section analysis of § 1026.19(e)(2)(iii). However, the final rule does not prevent a creditor from fulfilling its obligation to evaluate a borrower's ability to repay. Creditors will be able to collect whatever information they need to evaluate a borrower's ability to repay so long as they sequence the collection of that information to ensure that they provide a Loan Estimate when required by § 1026.19(e)(1)(iii) and without conditioning the issuance on verifying information.

The Bureau recognizes that some creditors may have to restructure their information collection process, such as by changing the manner in which they sequence their information collection and increasing communication with independent mortgage brokers. These changes may impose some costs on creditors. But the Bureau believes that the final rule's bright-line definition of application may provide some benefits to industry. Some commenters requested clarification regarding what information could be collected by creditors under the catch-all element. Because the current definition of application does not contain a standard for the additional information that may be collected before providing the Loan Estimate, the final rule's bright line definition may facilitate industry compliance with the disclosure requirements. In addition, a bright line definition may facilitate due diligence reviews by creditors' secondary market purchasers, securitizers, or other business partners, and thereby reduce overall burden.

Specific comments on the six items. The Bureau received comments on the six items of information, in addition to the removal of the seventh catch-all element. The Bureau is not adopting changes to the six elements. First, the final rule does not replace "social security number to obtain a credit report" with "credit score," as a mortgage broker commenter suggested. The Bureau believes a creditor would have sufficient time to obtain the credit score information before a Loan Estimate must be issued. Additionally, for reasons stated above, the Bureau does not believe it is necessary to provide that "property address" is an optional piece of information for purposes of the definition of application. As discussed in greater detail below, comment 19(e)(3)(iv)(A)-3 explains that creditors are not required to obtain the property address before they issue a Loan Estimate. The final rule also does not include a separate definition of application for pre-approval estimates or worksheets. Creditors are currently able to issue such documents at any time before issuing the RESPA GFE and the early TILA disclosure, and will continue to be able to do so under this final rule. Further, the Bureau believes that creating another definition of application would create consumer confusion and add to regulatory burden.

Final definition of application. For the reasons discussed above, the Bureau is finalizing the removal of the catch-all item from the definition of application in this final rule as proposed, pursuant to its authority under TILA section 105(a) and its authority under section 19(a) of RESPA. The definition of application adopted in this final rule consists of two parts. First, § 1026.2(a)(3)(i) defines application as the submission of a consumer's financial information for purposes of obtaining an extension of credit. This establishes a general definition for all credit transactions subject to Regulation Z. Second, § 1026.2(a)(3)(ii) provides that an application consists of six pieces of information for transactions subject to § 1026.19(e), (f), or (g) of Regulation Z. The six pieces of information consist of the consumer's name, income, social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought.

The Bureau acknowledges that in contrast to the proposed § 1026.2(a)(3)(ii), final § 1026.2(a)(3)(ii) narrows the scope of the definition of application to transactions subject to the integrated disclosure requirements. The Bureau believes that the modification is necessary to facilitate compliance with the final rule. The definition of application in proposed § 1026.2(a)(3)(ii) would have applied to any type of credit subject to subpart C of TILA, including closed-end loans not secured by real property. The Bureau did not intend the definition of application set forth in proposed § 1026.2(a)(3)(ii) to apply to other types of credit. As the Bureau stated in the proposal, the definition of application set forth in proposed § 1026.2(a)(2)(ii) consisted of elements that had an "established significance in the context of closed-end loans secured by real property, but may be less significant, or even inapplicable to other types of credit." 77 FR 51140.

Comment 2(a)(3)-1 is adopted as proposed, except for adjustments to harmonize the comment with adjustments to the scope of the definition of application set forth in final § 1026.2(a)(3)(ii). The comment provides guidance on when a consumer is considered to have submitted an application for purposes of § 1026.2(a)(3). This final rule does not require the receipt of the six items that make up the definition of an application in a particular order. The final rule permits a creditor to set up systems to collect the six items of information that make up the definition of application in the order that best suits the creditor's needs. Thus, creditors taking applications on paper form, over the phone, or on a webpage can sequence the information requested from the consumer in any order.

The Bureau does not believe that additional guidance is necessary with respect to the collection of information from consumers with whom the creditor has an existing business relationship, or a previous business relationship, with the creditor. The definition of application refers to the "submission" of the six items of information that make up the definition, and as such, merely maintaining such information from a previous transaction or business relationship would not constitute an application for purposes of the definition if the consumer has not submitted any information or indicated that he or she wishes such information maintained by the creditor to be used for an application. Additionally, because the definition of application refers to the "submission" of the six items of information that make up the definition, if a consumer starts filling out a mortgage application form online, enters the six pieces of information that constitute the definition of "application," but then saves the mortgage application form to complete at a later time, the consumer has not submitted the items of information.

Comments 2(a)(3)-2 and -3 are also adopted as proposed. Comment 2(a)(3)-2 clarifies that if a consumer does not have a social security number, the creditor may instead request a unique identifier the creditor uses to obtain a credit report. For illustrative purposes, the comment provides an example that states that a creditor has obtained a social security number to obtain a credit report for purposes of § 1026.2(a)(3)(ii) if the creditor collects a Tax

Identification Number from a consumer who does not have a social security number, such as a foreign national. A national fair housing consumer advocacy group commenter suggested moving this provision into the regulation. However, because the example illustrates how to comply with the requirements of § 1026.2(a)(3) if the consumer does not have a social security number, the Bureau believes that this example's placement should remain in commentary, rather than in the text of the regulation.

Finally, the Bureau understands that some creditors require a purchase and sale agreement prior to issuing the RESPA GFE and the early TILA disclosure. While this practice may be permissible under current Regulation X in some cases, it would conflict with final § 1026.19(e)(2)(iii), which prohibits a creditor from requiring verifying documentation before issuing a Loan Estimate. *See* the section-by-section analysis of § 1026.19(e)(2)(iii).

2(a)(6) Business Day

The Bureau proposed to apply the specific definition of the term "business day" under Regulation Z, which includes Saturdays, but excludes certain public holidays, to the provisions of § 1026.19(e) and (f) that would be analogous to § 1026.19(a)(1)(i), (a)(1)(ii), and (a)(2), which are the timing requirements for the integrated disclosures.

Although neither RESPA nor TILA defines the term "business day," that term is defined in Regulations X and Z. Both Regulation X § 1024.2(b) and Regulation Z § 1026.2(a)(6) generally define business day to mean a day on which the offices of the creditor or other business entity are open to the public for carrying on substantially all of the entity's business functions. For certain provisions of Regulation Z, however, the specific definition provided under Regulation Z applies, which includes all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), (*i.e.*, New Year's Day, the Birthday of Martin Luther

King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day).

The specific definition of business day applies to, among other things, the three-business-day limitation on the imposition of fees in § 1026.19(a)(1)(ii) and the three- and seven-business-day waiting periods in § 1026.19(a)(2). The Bureau proposed to amend § 1026.19 to implement analogous requirements for the integrated disclosures in new paragraphs (e) and (f) of that section. For consistency with the current timing requirements under § 1026.19(a), and to facilitate compliance with TILA, the Bureau proposed to use its authority under TILA section 105(a) to amend § 1026.2(a)(6) to apply the specific definition of business day to the provisions of § 1026.19(e) and (f) that would be analogous to § 1026.19(a)(1)(i), (a)(1)(ii), and (a)(2). The Bureau also proposed conforming amendments to comment 2(a)(6)-2. Under the proposal, in addition to other timing requirements for the integrated disclosures, the specific definition of business day would have applied to the requirement to deliver the Loan Estimate within three business days of a creditor receiving an application.

The Bureau stated in the TILA-RESPA Proposal that it recognized that this issue was previously raised during the Board's 2008-2009 MDIA rulemaking. *See* 73 FR 74989, 74991 (Dec. 10, 2008) and 74 FR 23289, 23293-23294 (May 19, 2009). However, the Bureau stated that it believed applying the specific definition of business day to the integrated disclosures would facilitate compliance. The Bureau solicited feedback regarding whether the general definition of business day instead should apply to the integrated disclosures delivery requirements. The Bureau also solicited comment on whether the rules should be analogous to the current rules, where the general business day requirement applies to some requirements and the specific business day requirement applies to other requirements. Finally, the Bureau solicited feedback regarding whether the business day usage under current § 1026.19(a) should remain, or if § 1026.19(a) should be modified to use a single definition of business day consistent with proposed § 1026.19(e) and (f).

Comments

In joint comments, two large national consumer advocacy groups asserted that the Bureau should replace both the general and specific definitions of business day currently used in Regulation Z with an alternative definition of business day that would exclude Saturdays, Sundays, and the legal public holidays specified in 5 U.S.C. 6103(a). The consumer advocacy groups asserted that the current specific definition of business day is flawed because people generally do not consider Saturdays as a "business day." The consumer advocacy groups also opposed the general definition of business day. They argued that it was subjective, varied entity-by-entity, and could be changed without warning. The commenters asserted that they did not believe that excluding Saturday from the definition of business day will have a significant consumer impact, and that any detriment would be outweighed by the benefits of their alternative definition. The consumer advocacy groups asserted that their alternative definition of business day would simplify compliance and training for businesses and help reduce the possibility of errors and litigation that arise from confusion over whether a particular day qualifies as a business day.

Industry commenters had mixed reactions to the proposed application of the specific definition of business day for determining the original Loan Estimate delivery requirement, although most opposed applying the specific definition. A large bank commenter expressed support for using the specific definition of business day for purposes of determining the amount of time a creditor has to deliver the Loan Estimate after receipt of a consumer's application because applying different definitions of business day is confusing to creditors, consumers, and other participants in the settlement process. A regional bank holding company supported applying the specific definition of business day to all mortgage-related provisions of Regulation Z based on its belief that the general definition of business day is vague. A national trade association representing mostly mortgage brokers and a State trade association representing similar entities supported the proposed application of the specific definition of business day for determining the original Loan Estimate delivery requirement. They asserted that most creditors operate at least six days a week. A title agent commenter supported the specific definition because it was easy to understand.

As noted above, most industry commenters strongly opposed using the specific definition of business day to determine the original Loan Estimate delivery requirement. The commenters included large banks, regional banks, community banks, credit unions, and non-depository lenders; several national, regional, and State trade associations representing banks, mortgage bankers, consumer mortgage companies, and credit unions; settlement and title agents, document preparation and software companies, compliance companies, a law firm, SBA, and a national trade association representing house financing agencies. The comments mostly focused on the compliance burden that would result from the adoption of the specific definition, because it would reduce the timeframe in which a creditor or mortgage broker would have to prepare and deliver the Loan Estimate. Commenters stated that creditors are typically not staffed so that they could provide the Loan Estimate within a timeframe determined by the application of the specific definition of business day to the original Loan Estimate delivery requirement. Some commenters stated that they are closed on weekends and others stated that they only offer limited service on weekends. Commenters also stated that the personnel that typically prepare the Loan Estimate do not work on Saturdays. A number of commenters stated that even if a creditor is open for business on a Saturday, third-party settlement service providers that a creditor must contact to obtain information creditors need to prepare the Loan Estimate may not be open. Commenters expressed concern that the specific definition of business day would increase operating and compliance costs substantially for creditors and third-party service providers, particularly if they are small entities, increase mistakes on the Loan Estimate, and increase redisclosures because it would reduce the timeframe in which a creditor or mortgage broker would have to prepare the Loan Estimate. Many of these commenters requested that the Bureau retain the general definition of business day for the original Loan Estimate delivery requirement.

A number of industry commenters supported establishing a consistent definition of business day to promote consistency across the provisions of Regulations X and Z that would be impacted by the TILA-RESPA Proposal to reduce compliance burdens for creditors. A large non-depository lender and a State credit union trade association expressed a preference for the general definition of business day, because applying the specific definition of business day to the preparation of the integrated disclosure would increase compliance burden by reducing the time available to prepare the integrated disclosures and expose creditors to unnecessary liability. A national trade association commenter representing mortgage bankers suggested that the general definition of business day should be clarified. The commenter appears to have sought to narrow the general definition of business day to an entity's mortgage origination functions so that at a multiservice financial institution, the determination of whether a day is a business day under the general definition would be evaluated in the context of the financial institution's mortgage origination business and the schedule of employees that work in that business segment.

Some commenters supported a specific definition of business day, but did not support the current specific definition of business day in Regulation Z, for the reasons discussed above. Some of these commenters supported applying an alternative definition of business day that excludes all Saturdays, Sundays, and the legal public holidays specified in 5 U.S.C. 6103(a), similar to the definition the two national consumer advocacy groups suggested, to the regulatory provisions that would be impacted by the TILA-RESPA Proposal. Several national trade associations representing banks, mortgage bankers, and consumer mortgage companies stated that it was important to continue to apply the specific definition of business day to regulatory provisions that prescribe the timeframe a consumer is given to review disclosures, such as the waiting period before consummation, the consumer’s right to rescind, and provisions related to when disclosures are considered to be received by the consumer and when fees may be charged, because consumers can receive mail on Saturday and review disclosures on Saturday. Lastly, one national trade association representing mortgage brokers suggested that the Bureau should eliminate the concept of business day with respect to any regulatory provision that contains a timing requirement related to mortgages. The commenter appeared to suggest that a standard based on calendar days would be easiest to understand.

Final Rule

Original Loan Estimate delivery requirement. The Bureau has considered these comments and has determined to retain the general definition of business day in Regulation Z for determining the original Loan Estimate delivery requirement. The Bureau has concluded that applying the specific definition of business day to the timing requirement to provide the original Loan Estimate within three business days of receipt of an application under § 1026.19(e)(1)(iii) would impose significant compliance costs on creditors that are not currently open for business on Saturdays, especially small creditors. As discussed above, many commenters stated that they do not carry on business on Saturdays. Further, even those that do would need to contact third-party service providers that may not be open for business on Saturdays to obtain information about fees to disclose on the Loan Estimate. The Bureau is concerned that creditors and settlement service providers that currently do not operate on Saturdays, especially smaller entities such as community banks, credit unions, and settlement agents, could disproportionately bear the operating and compliance costs caused by the final rule treating Saturday as a business day for the original Loan Estimate delivery requirement. Such entities might face significant practical pressure to operate on Saturday under the proposed rule, which could significantly increase their operating costs.

The Bureau is also concerned about the unintended consequences to consumers of applying the specific definition of business day for determining the original Loan Estimate delivery requirement. As discussed above, two large national consumer advocacy groups stated that they did not believe excluding Saturday from the definition of business day would have a significant impact on consumers. But as discussed above, many industry commenters expressed concern that the specific definition of business day would substantially increase operating and compliance costs because their operations are not set up to treat Saturday as a business day. Accordingly, the Bureau is concerned that an unintended consequence of applying the specific definition of business day to the original Loan Estimate delivery requirement would be creditors and settlement service providers raising origination charges and fees for settlement services to cover their increased operation costs. The Bureau believes that this result could ultimately harm consumers.

The Bureau also believes that retaining the general definition of business day for the original Loan Estimate delivery requirement would facilitate compliance because as proposed, the general definition of business day in Regulation Z would have been retained for purposes of determining revised Loan Estimate delivery requirement in proposed § 1026.19(e)(4)(i). The Bureau believes that applying the same definition of business day to the original Loan Estimate delivery requirement as the revised Loan Estimate delivery requirement will facilitate compliance for industry.

Consistent definition of business day. The Bureau is also not adjusting the general definition of business day, in the manner requested by a national trade association representing mortgage bankers. As discussed above, the commenter appeared to request that the general definition of business day be evaluated in the context of a financial institution's mortgage origination business and the schedule of employees that work in that business segment. The Bureau believes such a definition would not only be discordant with the current definition that considers whether a creditor's offices are open to the public for carrying on substantially all of its business functions, but would also increase the level of difficulty in evaluating compliance.

The Bureau recognizes that a consistent definition of business day throughout Regulation Z could enhance consumer understanding and facilitate compliance with Regulation Z. However, the Bureau believes such a far reaching amendment to the definition of business day, which affects many provisions throughout Regulation Z, is beyond the scope of this rulemaking and would be inappropriate in this final rule. The Bureau believes it would need to conduct further study of this issue before undertaking such a rulemaking. There would be many issues and alternatives to consider in such a rulemaking. As discussed above, two large national consumer advocacy groups asserted that the Bureau should replace both the general and specific definitions of business day with a single definition that excludes Saturdays, Sundays, and the legal public holidays specified in 5 U.S.C. 6103(a) throughout Regulation Z. But as noted above, several national trade associations asserted that it was important to maintain the current specific definition of business day, which includes Saturday, for provisions such as the waiting period before consummation. The commenters also asserted that the specific definition should continue to apply to provisions related to the consumer's right to rescind in certain mortgage transactions. The Bureau believes further study of these issues would be necessary, and thus, it would be inappropriate to finalize such an amendment in this final rule. However, the Bureau may review such a definition in the context of its 2011 Streamlining RFI.

Final definition of business day. For the reasons discussed above, in the final rule, the Bureau is applying the general definition of business day for the requirement to deliver the initial disclosures within three business days under § 1026.19(e)(1)(iii). The Bureau is otherwise finalizing the definition of business day as proposed. Specifically, the Bureau is adopting the specific definition of business day to the seven-business day waiting period in § 1026.19(e)(1)(iii)(B), § 1026.19(e)(1)(iv) and § 1026.19(e)(2)(i)(A). These provisions are analogous to provisions in § 1026.19(a) of Regulation Z to which the specific definition of business day currently applies, and the Bureau believes such consistency will facilitate compliance for industry.

For reasons set forth in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), the Bureau is also adopting the aspect of the proposal that would have applied the specific definition of business day to § 1026.19(f)(1)(ii) and (iii). Further, for reasons discussed in greater detail in the section-by-section analyses of §§ 1026.19(e)(4)(ii) and 1026.20(e)(5), the Bureau is also adopting the application of the specific definition of business day to these sections, which establish timing requirements for, respectively, the receipt of revised Loan Estimates and the Post-Consummation Escrow Cancellation Disclosure. The Bureau has also made a minor modification to comment 2(a)(6)-2 to refer to real estate-secured loans as well as dwelling-secured loans, as § 1026.19(e) and (f) apply to closed-end credit transactions secured by real property.

2(a)(17) Creditor

Under current Regulation Z, a person who extended consumer credit 25 or fewer times in the past calendar year, or five or fewer times for transactions secured by a dwelling, does not qualify as a "creditor." *See* 12 CFR 1026.2(a)(17)(v). The Bureau's 2011 Streamlining RFI requested comment on whether these thresholds should be raised and, if so, to what number of transactions. That proposal also solicited comment on whether a similar exemption should be applied to the integrated disclosures. In response, trade association commenters suggested raising the threshold number of transactions in order to reduce regulatory burden on small lenders. For example, one trade association commenter suggested raising the threshold number of transactions to 50, regardless of transaction type. In light of this feedback, the Bureau requested comment in the TILA-RESPA Proposal on whether the five-loan exemption threshold was appropriate for transactions that would be subject to this final rule and, if not, what number of transactions would be appropriate. The Bureau also solicited comment on whether any transaction-based exemption adopted in this rulemaking should be applied to the pre-consummation disclosure requirements of sections 4 and 5 of RESPA.

Comments

Industry commenters expressed mixed views with respect to whether the definition of creditor should be changed to accommodate small businesses. On the one hand, some industry commenters requested that the Bureau further increase the threshold under Regulation Z for defining creditors or adopt an exemption for small businesses. They included a national trade association representing escrow and settlement agents, two law firm commenters, a community bank commenter, and a national trade association representing Federally-chartered credit unions.

On the other hand, other commenters, including a commenter employed by a software company, several individual commenters, and settlement agents expressed concern that it would be difficult to identify criteria for a small creditor definition and that inconsistent application of the integrated disclosure requirements across the mortgage market would harm consumers because it would impede consumer shopping among different creditors. Lastly, a national trade association representing mortgage brokers objected to the fact that the determination of whether a person is a "creditor" is based on the person's business volume. The commenter asserted that it makes compliance difficult because a creditor would not know in advance how many transactions it will process in any given year. The commenter stated that if disclosures are unnecessary for small entities, they are also unnecessary for large ones.

Final Rule

The Bureau has considered the comments and has concluded that the existing thresholds used to determine whether a person is a creditor under Regulation Z in § 1026.2(a)(17)(v) should be retained in this final rule. TILA section 103(g) provides that the definition of creditor refers to a person who "regularly extends" consumer credit. The Bureau believes that it does not have information in connection with this rulemaking to support a determination that the requirements of TILA should not apply to entities that regularly extend consumer credit solely because they are small businesses. The Bureau believes that the volume-based exemptions in § 1026.2(a)(17)(v) are intended to address the potentially significant differences in abilities to comply with Regulation Z's disclosures requirements between entities that provide disclosures on a frequent basis, because they regularly extend consumer credit, and entities that provide disclosures on an infrequent basis, because they extend consumer credit on an irregular basis. The Bureau did not propose in the TILA-RESPA Proposal new thresholds to replace the existing thresholds used to determine whether a person is a creditor under Regulation Z, and does not currently have information sufficient to support adjusting the existing thresholds. Based on the significant effect such an amendment could potentially have on the market, especially considering that the definition applies to all of Regulation Z, the Bureau believes it would need to obtain additional information, possibly through further notice and comment, and conduct additional study of the issue before issuing a final rule on the issue.

The Bureau believes the numerical thresholds in the current definition of creditor provide clear guidance to determine whether an entity is a creditor for purposes of § 1026.2(a)(17)(v), as the Board believed when it originally finalized numerical thresholds for the definition of creditor in 1981.[162] As discussed above, current § 1026.2(a)(17)(v) provides that the number of transactions that is used to determine whether a person is a creditor is based on the number from the past calendar year. Because the Bureau believes the numerical thresholds in the current definition facilitate compliance with the requirements of Regulation Z for industry and because it does not have sufficient information on which to base an amendment to such thresholds, the Bureau is not amending the definition of creditor in this final rule. Lastly, for reasons discussed below in the general section-by-section analysis of § 1026.19, the Bureau has also concluded that it will not adopt a small business exemption with respect to the integrated disclosure requirements being adopted in this final rule.

2(a)(25) Security Interest

[162] 46 FR 20848, 20851 (April 7, 1981) ("The Board believes these numerical tests will be most useful in cases when a person does not extend credit as part of its primary business and therefore is genuinely unsure whether it is a 'creditor' for Truth in Lending purposes").

Under the definition of the term "security interest" in current § 1026.2(a)(25), for purposes of the disclosure requirements in §§ 1026.6 and 1026.18, the term does not include an interest that arises solely by operation of law. For consistency and to facilitate compliance with TILA, pursuant to its authority under TILA section 105(a), the Bureau proposed a conforming amendment to the definition of security interest that would have extended this exemption to disclosures required under proposed §§ 1026.19(e) and (f), and 1026.38(l)(6). The same conforming amendment would have been made to comment 2(a)(25)-2. Having received no comments on the conforming amendment, the Bureau is adopting the conforming amendment as proposed, pursuant to its authority under TILA section 105(a), for consistency and to facilitate compliance with TILA. The Bureau received comments from a mortgage broker commenter that appeared to seek clarification from the Bureau with respect to what makes a particular type of property interest a "security interest" for purposes of § 1026.2(a)(25). The Bureau believes that this question is adequately addressed by existing comment 2(a)(25)-1.

Section 1026.3 Exempt Transactions

In the TILA-RESPA Proposal, the Bureau proposed a partial exemption from the disclosure requirements of proposed § 1026.19(e), (f), and (g) for certain mortgage loans, and accordingly, proposed conforming amendments to § 1026.3(h) to reflect this exemption. The Bureau also proposed amendments to the commentary to § 1026.3(a) to clarify the current exemption for certain trusts.

3(a) Business, Commercial, Agricultural, or Organizational Credit

TILA section 104(1), 15 U.S.C. 1603(1), excludes from TILA's coverage extensions of credit to, among others, organizations. Accordingly, § 1026.3(a)(2) provides that Regulation Z does not apply to extensions of credit to other than a natural person. The Bureau proposed revising comments 3(a)-9 and -10 to clarify that credit extended to certain trusts for tax or estate planning purposes is considered to be extended to a natural person rather than to an organization and, therefore, is not exempt from the coverage of Regulation Z under § 1026.3(a)(2).

Existing comment 3(a)-10 discusses land trusts, a relatively uncommon way of structuring consumer credit in which the creditor holds title to the property in trust and executes the loan contract as trustee on behalf of the trust. The comment states that, although a trust is technically not a natural person, such arrangements are subject to Regulation Z because "in substance (if not form) consumer credit is being extended." This TILA-RESPA Proposal amended comment 3(a)-10 to extend this rationale to more common forms of trusts. Specifically, proposed comment 3(a)-10 would have noted that consumers sometimes place their assets in trust with themselves as trustee(s), and with themselves or themselves and their families or other prospective heirs as beneficiaries, to obtain certain tax benefits and to facilitate the future administration of their estates. Further, proposed comment 3(a)-10 would have stated that Regulation Z applies to credit that is extended to such a trust, even if the consumer who is both trustee and beneficiary executes the loan documents only in the capacity of the trustee, for the same reason the existing comment notes with respect to land trusts: such transactions are extensions of consumer credit in substance, if not in form. The Bureau proposed revising comment 3(a)-9 to cross-reference comment 3(a)-10.

A number of industry trade association commenters noted that proposed comment 3(a)-10 was ambiguous in its application to trusts with multiple beneficiaries. Specifically, the commenters asked for clarification with respect to which beneficiary should receive the disclosures required by proposed § 1026.19(e), (f), and (g), and which beneficiary has the right to rescind the transaction under the conditions described in § 1026.23. The same commenters also asked the Bureau to clarify that only revocable trusts are covered by the proposed language, noting that mortgage loans made to other types of trusts are niche products that do not meet GSE underwriting guidelines, are subject to substantial due diligence and as such should not be subject to Regulation Z.

After consideration of the comments received, the Bureau is adopting comments 3(a)-9 and -10 generally as proposed. The proposed comments are intended to clarify that the benefits of the disclosures required by § 1026.19(e), (f), and (g) extend to any consumer involved in a transaction that in substance extends consumer credit, regardless of whether that consumer is the direct mortgage obligor or a beneficiary of a trust to which such credit has been extended. With that rationale in mind, the Bureau believes that the intent of the comment is to clarify that those provisions of Regulation Z that apply to consumers will also apply to trust beneficiaries who are in essence acting as consumers. Accordingly, specific guidance with respect to the commenters' requests for clarification can be found in §§ 1026.17(d) and 1026.23(a)(4) and their associated commentary, which provide guidance with respect to consumers' rights and benefits in transactions that involve multiple obligors and the right to rescind a transaction.

In addition, because the proposed comment clarifies the coverage of loans made to trusts under Regulation Z based on the purpose of the loan, rather than on the loan's frequency in the market or its compliance with GSE underwriting guidelines, the Bureau declines to add language to the comment specifying that the trusts covered by the proposed comments are limited to revocable trusts. Comments 3(a)-9 and (a)-10 are therefore finalized as proposed, except that the Bureau is making modifications to comment 3(a)-10 to add the word "primarily," in order to bring the language of the comment into conformity with the definition of "consumer credit" provided in § 1026.2(a)(12), and to clarify that the application of the exemption extends to trusts that benefit the consumer but are executed by a third-party trustee, such as a bank or an attorney. The Bureau believes that trusts in which the consumer is a beneficiary but the trustee is a third party, similar to trusts in which the consumer is both the trustee and beneficiary, are in substance (if not form) consumer credit transactions. The Bureau is revising comments 3(a)-9 and -10 accordingly, pursuant to its authority under TILA section 105(a), because it believes it will assure a meaningful disclosure of credit terms to consumers and promote the informed use of credit.

3(h) Partial Exemption for Certain Mortgage Loans

In the TILA-RESPA Proposal, the Bureau proposed a new § 1026.3(h) to provide an exemption from proposed § 1026.19(e), (f), and (g) for transactions that satisfy several criteria associated with certain housing assistance loan programs for low- and moderate-income persons. As discussed below, proposed § 1026.19(e) and (f) would have established the requirement to provide the new integrated disclosures for closed-end transactions secured by real property, other than reverse mortgages, and proposed § 1026.19(g) would have established the requirement to provide a special information booklet for those transactions. The partial exemption in proposed § 1026.3(h) was meant to parallel § 1024.5(c)(3), discussed above; it was designed to create consistency with Regulation X and to codify a disclosure exemption previously granted by HUD. Thus, under each of the two proposed exemptions, lenders would have been exempted from providing the integrated disclosures for transactions that satisfy the exemption's conditions, even if the transaction otherwise would be subject to RESPA.

The Bureau believed that the proposed exemption created consistency with Regulation X and therefore would facilitate compliance with TILA and RESPA. In addition, the Bureau believed that the special disclosure requirements that covered persons must meet to qualify for the proposed exemption helped ensure that the features of these mortgage transactions were fully, accurately, and effectively disclosed to consumers in a manner that would have permitted consumers to understand the costs, benefits, and risks associated with these mortgage transactions, consistent with Dodd-Frank Act section 1032(a). The proposed exemption would have also improved consumer awareness and understanding of transactions involving residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau considered the factors in TILA section 105(f) and believed that, for the reasons discussed above, an exemption was appropriate under that provision. Specifically, the Bureau determined that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau determined that the proposed exemption was appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau determined that, on balance, the proposed exemption would have simplified the credit process without undermining the goal of consumer protection or denying important benefits to consumers.

The proposed exemption would have applied only to transactions secured by a subordinate lien. For the same reasons discussed in the section-by-section analysis of proposed § 1024.5(c)(3), the Bureau requested comment on whether the exemption in proposed § 1026.3(h) should extend to first liens. In addition, for the reasons discussed above, the Bureau sought comment on whether requirements and features that may serve as interest substitutes should be considered "interest" and, therefore, be impermissible for loans seeking to qualify for this partial exemption. The Bureau also sought comment on the types of loan requirements and features that should be similarly deemed "interest" for purposes of this partial exemption.

Alternatively, the Bureau sought comment on whether such requirements and features should be permissible within the exemption on the grounds that the disclosure required by proposed § 1026.3(h)(6) is sufficient to inform consumers of such loan terms.

The Bureau proposed several comments in an effort to provide additional guidance regarding § 1026.3(h). Proposed comment 3(h)-1 would have noted that transactions that meet the requirements of § 1026.3(h) would be exempt from only the integrated disclosure requirements and not from any other applicable requirement of Regulation Z. The comment would have further clarified that § 1026.3(h)(6) required the creditor to comply with the disclosure requirements of § 1026.18, even if the creditor would not otherwise be subject to that section because of proposed § 1026.19(e), (f), and (g). In addition, the comment would have noted that the consumer also had the right to rescind the transaction under § 1026.23, to the extent that provision was applicable.

The Bureau also proposed comment 3(h)-2, which would have explained that the two conditions that the transaction not require the payment of interest under § 1026.3(h)(3) and that repayment of the amount of credit extended be forgiven or deferred in accordance with § 1026.3(h)(4) must be evidenced by terms in the credit contract. The comment would have further clarified that, although the other conditions did not need to be reflected in the credit contract, the creditor would need to retain evidence of compliance with those requirements, as required by § 1026.25(a). The Bureau solicited comment on whether this exemption should be adopted in Regulation Z.

In comments provided to the Bureau, a Federal government agency and a not-for-profit organization, both of which provide housing assistance to consumers, requested that the Bureau extend the exemption to apply to loans secured by first liens. They reasoned that first-lien loan transactions provided to low-income borrowers who do not qualify for other sources of credit have the same characteristics as the subordinate loan transactions that are exempted in proposed § 1026.3(h). The not-for-profit organization further commented that the Bureau should not consider costs such as mortgage insurance or shared equity/shared appreciation to be "interest substitutes" for purposes of determining whether a transaction qualifies for the exemption, but noted that those costs should nonetheless be disclosed by the creditor.

In response to the requirement that transactions exempted by proposed § 1026.3(h) continue to comply with the disclosure requirements set forth in § 1026.18, several industry trade associations proposed that creditors be given the option of *either* complying with the requirements of § 1026.18 *or* complying with the integrated disclosures.

With respect to the comment requesting that the Bureau extend the exemption to first-lien transactions, the Bureau declines to extend the exemption as such. The Bureau understands that some first-lien transactions may be extended that satisfy the conditions of this exemption other than the requirement that the transaction be secured by a subordinate lien. However, the Bureau does not believe that such transactions should be exempted from the requirements of § 1026.19(e), (f), and (g). The disclosure requirements under § 1026.19(e) and (f), as discussed in the section-by-section analyses of §§ 1026.37 and 1026.38 below, provide information regarding costs that consumers in such transactions may still be required to pay with respect to the real property, such as real estate taxes and homeowner's insurance. In addition, the special information booklet required by § 1026.19(g) may provide valuable information to consumers regarding the costs of home ownership. The Bureau has conducted consumer testing of the format in which the information is presented in the integrated disclosures to ensure that the disclosures are effective in aiding consumer understanding of these costs. Unlike with an exempted transaction secured by a subordinate lien in which consumers would receive an integrated disclosure containing this information in connection with the first-lien transaction, consumers in a first-lien transaction, if it were exempted, would not receive this information in the format the Bureau has tested with consumers. In addition, as discussed with respect to the parallel exemption under § 1024.5, as discussed above, the Bureau has decided to keep with its intent to codify the exemption previously granted by HUD, which likewise only applied to subordinate loan transactions. Accordingly, the Bureau has determined to adopt the exemption as proposed.

With respect to the comment that costs such as mortgage insurance or shared equity/shared appreciation not be considered interest for purposes of the condition that the loan not require the payment of interest, but that they be disclosed as non-interest costs in connection with exempted transactions, the Bureau has determined not to expand the condition to cover such costs. The Bureau points the commenter to § 1026.18 and its commentary for the treatment of mortgage insurance and shared equity/shared appreciation programs for purposes of the closed-end disclosures required under that section.

With respect to the comment that creditors be given the option of either complying with the integrated disclosure requirements or § 1026.18, the Bureau declines to provide this option. Because the intent of the exemption is to codify the exemption as provided by HUD, and additionally, decrease the burden of disclosure for creditors involved in the covered transactions, the Bureau declines to amend the proposed rule and its commentary to include the commenters' suggested alternative. For the reasons described above, the Bureau is adopting § 1026.3(h)(6) and comments 3(h)-1 and -2 substantially as proposed, with minor modifications for clarity.

Section 1026.4 Finance Charge

Background

Section 106(a) of TILA defines the finance charge as "the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit," excluding "charges of a type payable in a comparable cash transaction." 15 U.S.C. 1605(a). Despite this broad general definition of the finance charge, TILA excludes numerous charges from the finance charge. For example, TILA generally includes in the finance charge credit insurance and property and liability insurance charges or premiums, but it also excludes such amounts if certain conditions are met. TILA section 106(b), (c); 15 U.S.C. 1605(b), (c). TILA also specifically excludes from the computation of the finance charge certain charges related to the perfecting of a security interest, and various fees in connection with loans secured by real property, such as title examination fees, title insurance premiums, fees for preparation of loan-related documents, escrows for future payment of taxes and insurance, notary fees, appraisal fees, pest and flood-hazard inspection fees, and credit report fees. TILA section 106(d), (e); 15 U.S.C. 1605(d), (e). Such amounts would otherwise be included in the finance charge under the general definition.

Current § 1026.4 implements TILA section 106 by largely mirroring the statutory definition of finance charge and the specific exclusions from that definition. In addition, § 1026.4 contains certain exclusions from the finance charge that are not specifically excluded in the statute. For example, current § 1026.4(c) specifically excludes application fees and forfeited interest from the definition of finance charge, whereas TILA does not.

There are longstanding concerns about the "some fees in, some fees out" approach to the finance charge in TILA and Regulation Z. In 1995, Congress directed the Board to study the finance charge, including the feasibility of treating as finance charges all costs required by the creditor or paid by the consumer as an incident of the credit.[163] In April 1996, the Board submitted its report to Congress, in which it noted both the compliance difficulties associated with the existing finance charge definition, but also the potential drawbacks of adopting an "all-inclusive finance charge rule," such as the implementation costs for industry (which it stated "would likely be many millions of dollars"), the necessity of reeducation regarding the resulting increased APRs, and the effects on the usefulness of the APR caused by the inclusion of optional services in the finance charge.[164] The Board did not recommend the adoption of an "all-inclusive finance charge rule" in the report, but instead, stated it believed that "further debate must precede the crafting of any proposals for statutory changes to finance charge disclosures affecting the APR."[165]

Following that study, in July 1998, the Board and HUD issued the Board-HUD Joint Report, in which the agencies also noted concerns with the "some fees in, some fees out" approach to the finance charge.[166] The Board-HUD Joint Report states that a fundamental problem with the finance charge is that the "cost of credit" has different meanings from the perspective of the consumer and the creditor.[167] From the creditor's perspective, the cost of credit may mean the interest and fee income that the creditor receives in exchange for providing credit to the consumer.[168] However, the consumer views the cost of credit as what the consumer

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[163] Public Law 104-29, 109 Stat. 271 (1995).
[164] *See* Bd. Of Governors of the Fed. Reserve Sys., *Report to the Congress on Finance Charges for Consumer Credit under the Truth in Lending Act* 10-11 (April 1996), available at http://www.federalreserve.gov/boarddocs/rptcongress/fc_study.pdf.
[165] *Id.* at 12.
[166] Bd. Of Governors of the Fed. Reserve Sys. & U.S. Dep't of Hous. & Urban Dev., *Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act* (July 1998), available at http://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf.
[167] *Id.* at 10.
[168] *Id.*

pays for the credit, regardless of the persons to whom such amounts are paid.[169] The current "some fees in, some fees out" approach to the finance charge largely reflects the creditor's, rather than the consumer's, perspective. The Board-HUD Joint Report recommended that the definition of finance charge be expanded to what it titled the "Required Cost of Credit Test" under which the finance charge would include "the costs the consumer is required to pay to get the credit."[170]

In its 2009 Closed-End Proposal, the Board proposed to broaden the definition of the finance charge in closed-end transactions secured by real property or a dwelling, citing the Board-HUD Joint Report and consumer testing conducted by the Board as support for an expanded approach to the finance charge. 74 FR 43232, 43243 (Aug. 26, 2009). First, the Board reasoned that excluding certain fees from the finance charge undermines the effectiveness of the APR as a measure of the true cost of credit. *Id.* Second, the Board's 2009 Closed-End Proposal stated that the numerous exclusions from the finance charge encourage lenders to shift the cost of credit to excluded fees. *Id.* This practice undermines the APR's utility and has resulted in the creation of new so-called "junk fees," such as fees for preparing loan-related documents, which are not part of the finance charge. Third, the Board cited the complexity of the implementing rules, which create significant regulatory burden and litigation risk, as support for a simplified definition of the finance charge. *Id.*

In light of these concerns about the finance charge, the Board's 2009 Closed-End

[169] *Id.*
[170] *Id.* at 13-16. A subsequent joint report issued by HUD and the U.S. Department of the Treasury expressly adopted this recommendation, concluding that the " 'all in approach' would improve the APR's usefulness and at the same time lessen the compliance burden for industry." U.S. Dep't of Treas. and U.S. Dep't of Hous. and Urban Dev., *Joint Report on Recommendations to Curb Predatory Home Mortgage Lending*, available at *http://archives.hud.gov/reports/treasrpt.pdf*.

Proposal would have replaced the "some fees in, some fees out" approach to the finance charge for mortgage loans with a more inclusive approach to ensure that the finance charge and corresponding APR disclosed to consumers provide a more complete and useful measure of the cost of credit. The Board did not finalize its proposal prior to the transfer of its TILA rulemaking authority to the Bureau in July 2011.

The Bureau's Proposal

For the reasons set forth in the Board's 2009 Closed-End Proposal, the TILA-RESPA Proposal would have revised the test for determining the finance charge in § 1026.4. The Bureau's proposal would have largely mirrored the Board's 2009 Closed-End Proposal, with limited clarifying changes. Pursuant to its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the proposed rule would have amended § 1026.4 to replace the current "some fees in, some fees out" approach to the finance charge with a more inclusive test based on the general definition of finance charge in TILA section 106(a). 15 U.S.C. 1601 note; 1604(a), (f); 12 U.S.C. 5532(a).

Under proposed § 1026.4, the current exclusions from the finance charge would have been largely eliminated for closed-end transactions secured by real property or a dwelling. Specifically, under the proposed rule, a fee or charge would have been included in the finance charge if it is (1) "payable directly or indirectly by the consumer" to whom credit is extended, and (2) "imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." However, the finance charge would have continued to exclude fees or charges paid in comparable cash transactions. The proposed rule also would have retained a few narrow exclusions from the finance charge: late fees and similar default or delinquency charges (excluded under current § 1026.4(c)(2)), seller's points (excluded under current § 1026.4(c)(5)), amounts required to be paid into escrow accounts if the amounts would not otherwise be included in the finance charge (excluded under current § 1026.4(c)(7)(v)), and premiums for property and liability insurance under certain conditions (excluded under current § 1026.4(d)(2)).

Effect on Other Rules

The Bureau's proposed rule recognized that a more inclusive finance charge would affect coverage under other laws, such as higher-priced mortgage loan (HPML) and HOEPA protections, and would have implications for the Bureau's HOEPA, Escrows, Appraisals, and Ability-to-Repay rulemakings under title XIV of the Dodd-Frank Act. These rulemakings have since been finalized by the Bureau.[171]

Specifically, absent further action by the Bureau, the more inclusive finance charge would have:

- Caused more closed-end loans to trigger HOEPA protections for high-cost loans. The protections include special disclosures, restrictions on certain loan features and lender practices, and strengthened consumer remedies. The more inclusive finance charge also would have affected both the points and fees test (which currently uses the finance charge as its starting point) and the APR test (which under the Dodd-Frank Act depends on comparisons to the average prime offer rate (APOR)) for defining what constitutes a high-cost loan.[172]

[171]References to the Bureau's rulemakings under title XIV of the Dodd-Frank Act are to the final rules issued by the Bureau in January 2013. *See* part II.F for a discussion of these rulemakings.

[172]Under rules implementing provisions of the Dodd-Frank Act, a loan is defined as a high-cost mortgage, subject to HOEPA protections, if the total points and fees payable in connection with the transaction exceed specified thresholds (points and fees coverage test); the transaction's APR exceeds the applicable average prime offer ate (APOR) by a specified threshold (APR coverage test); or the transaction has certain prepayment penalties. First, under the points and fees coverage test, the definition of points and fees includes, as its starting point, all items included in the finance charge. Therefore, a potential consequence of the more inclusive finance charge would have been that more loans might exceed HOEPA's points and fees threshold because new categories of charges would

- Caused more loans to trigger Dodd-Frank Act requirements to maintain escrow accounts for first-lien HPMLs under the Escrows rulemaking. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Caused more loans to trigger Dodd-Frank Act requirements to obtain one or more interior appraisals under the Interagency Appraisals rulemaking. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Reduced the number of loans that would otherwise be "qualified mortgages" under the 2013 ATR Final Rule, given that qualified mortgages cannot have points and fees in excess of three percent of the total loan amount. The changes also would have decreased the number of qualified mortgages that receive a safe harbor from liability under the ability-to-repay provisions because the 2013 ATR Final Rule provides that qualified mortgages that are higher-priced receive a rebuttable presumption of compliance with the ability-to-repay requirements, rather than a safe harbor. In addition, more loans would have been required to comply with separate underwriting requirements applicable to higher-priced balloon loans, and been ineligible for certain exceptions authorizing creditors to

have been included in the calculation of total points and fees for purposes of that coverage test. In addition, under the APR coverage test, the more inclusive finance charge could have resulted in some additional loans being covered as high-cost mortgages because closed-end loans would have had higher APRs. There are currently some differences between APR and APOR, the latter of which is generally calculated using data that includes only contract interest rates and points but not other origination fees. *See* 75 FR 58539, 58660-62 (Sept. 24, 2010). The current APR includes not only discount points and origination fees but also other charges the creditor retains and certain third-party charges. The more inclusive finance charge, which would have also included most third-party charges, would have widened the disparity between the APR and APOR and caused more closed-end loans to qualify as high-cost mortgages. Similar implications would have applied to each respective rulemaking in which coverage depends on comparing a transaction's APR to the applicable APOR. The Bureau notes, however, that the Dodd-Frank Act expands HOEPA to apply to more types of mortgage transactions, including purchase money mortgage loans and open-end credit plans secured by a consumer's principal dwelling. However, the proposed more inclusive finance charge would have applied only to closed-end loans. Therefore, the more inclusive finance charge would not have affected the potential coverage of open-end credit plans under HOEPA.

offer prepayment penalties on fixed rate, non-higher-priced qualified mortgage loans.[173] Again, status as "higher-priced" depends on comparing APR to the applicable APOR.

The Board previously proposed two means of reconciling an expanded definition of the finance charge with thresholds for loan APR and points and fees. On several occasions, the Board proposed to replace the APR with a "transaction coverage rate" (TCR) as a transaction-specific metric a creditor compares to the APOR to determine whether the transaction meets the higher-priced loan threshold in current § 1026.35(a). *See* 76 FR 27390, 27411-12 (May 11, 2011); 76 FR 11598, 11608-09 (Mar. 2, 2011); 75 FR 58539, 58660-61 (Sept. 24, 2010).[174] Although adopting the TCR would mean that lenders would have to calculate one metric for purposes of disclosure and another for purposes of regulatory coverage, the Board stated that both metrics would be simpler to compute than APR today using the current definition of finance charge.[175] In addition, the Board proposed to amend the definition of points and fees to retain the existing treatment of certain charges in the definition of points and fees for purposes of determining HOEPA coverage. 75 FR 58539, 58636-38 (Sept. 24, 2010).

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[173] Specifically, the Dodd-Frank Act and the 2013 ATR Final Rule generally prohibit prepayment penalties on closed-end, dwelling-secured mortgage loans, except on fixed rate qualified mortgages that are not higher-priced. For balloon loans, the Dodd-Frank Act and the 2013 ATR Final Rule generally require creditors to assess consumers' ability to repay a higher-priced loan with a balloon payment using the scheduled payments required under the terms of the loan including any balloon payment, and based on income and assets other than the dwelling itself. 78 FR 6408, 6585 (Jan. 30, 2013). Only consumers with substantial income or assets would likely qualify for such a loan.

[174] The TCR would have been determined in accordance with the applicable rules of Regulation Z for the calculation of the APR for a closed-end transaction, except that the prepaid finance charge for purposes of calculating the transaction coverage rate includes only charges that will be retained by the creditor, mortgage broker, or affiliates of either. The Board's proposed definition of TCR varied slightly between the 2010 Mortgage Proposal and the 2011 Escrows Proposal as to treatment of charges retained by mortgage broker affiliates. In its 2012 HOEPA Proposal, the Bureau proposed to use the 2011 Escrows Proposal version, which would include charges retained by broker affiliates. 77 FR 49090, 49102 (Aug. 15, 2012).

[175] To the extent that creditors believed that it would be burdensome to calculate two metrics, the Board's proposal stated that they could continue to use APR for both coverage and disclosure purposes.

In the TILA-RESPA Proposal, the Bureau acknowledged that it is not clear from the legislative history of the Dodd-Frank Act whether Congress was aware of the Board's 2009 Closed-End Proposal to expand the definition of finance charge or whether Congress considered the interplay between an expanded definition and coverage under various thresholds addressed in the Dodd-Frank Act. In light of this fact and the concerns raised by commenters on the Board's 2009 Closed-End Proposal regarding effects on access to credit, the Bureau believed that it was appropriate to explore alternatives to implementation of the expanded finance charge definition for purposes of coverage under HOEPA and the other regulatory regimes.

For this reason, the TILA-RESPA Proposal sought comment on potential coverage threshold modifications. In particular, the proposal sought comment on the prior Board proposals and other potential methods of addressing the impact of a more inclusive approach to the finance charge on affected regulatory regimes. The proposal also requested comment on the potential advantages and disadvantages to both consumers and creditors of using different metrics for purposes of disclosures and for purposes of determining coverage of the affected regulatory regimes. With regard to the TCR, the Bureau stated its belief that the potential compliance burden associated with the two-calculation requirement would be mitigated by the fact that both TCR and APR would be easier to compute than the APR today using the current definition of finance charge. The Bureau also requested comment on whether use of the TCR or other trigger modifications should be optional, so that creditors could use the broader definition of finance charge to calculate APR and points and fees triggers if they preferred.

Finally, the Bureau requested data that would allow it to perform a quantitative analysis to determine the impacts of a broader finance charge definition on APR thresholds for HOEPA and the other regimes. In its 2009 Closed-End Proposal, the Board relied on a 2008 survey of closing costs conducted by Bankrate.com that contained data for hypothetical $200,000 loans in urban areas. Based on that data, the Board estimated that the share of first-lien refinance and home improvement loans that were then subject to HOEPA would increase by 0.6 percent if the definition of finance charge were expanded as proposed. In the TILA-RESPA Proposal, the Bureau stated that it was considering the 2010 version of that survey, but also sought additional data that would provide more representative information regarding closing and settlement costs that would allow for a more refined analysis of the proposals. The Bureau generally sought comment on its plans for data analysis, as well as additional data and comment on the potential impacts of a broader finance charge definition and potential modifications to the triggers.

In addition to the measures proposed by the Board, the Bureau proposed language to adopt the TCR and to exclude the additional charges from the HOEPA points and fees test in its 2012 HOEPA Proposal. 77 FR 49090 (Aug. 15, 2012). The 2012 Interagency Appraisals Proposal also proposed to adopt the TCR. 77 FR 54722 (Sept. 5, 2012). The 2013 HOEPA, Escrows, and Appraisals Final Rules did not adopt the TCR or changes to the points and fees test to account for the expanded finance charge, but those final rules noted the Bureau would consider comments on those aspects of the proposals in conjunction with the rule addressing the expanded finance charge proposal. *See* 78 FR 6856 (Jan. 31, 2013); 78 FR 4726 (Jan. 22, 2013); 78 FR 10368 (Feb. 13, 2013).

Timing of Implementation

The TILA-RESPA Proposal sought comment on the timing of implementation of any changes to the finance charge definition. The Bureau noted that there is no statutory deadline for issuing final rules to integrate the mortgage disclosures under TILA and RESPA, and that the Bureau expected that it may take some time to conduct quantitative testing of the forms prior to issuing final rules. However, the Bureau also expected to issue several final rules to implement provisions of title XIV of the Dodd-Frank Act by January 21, 2013, including the rules discussed above, that address thresholds for compliance with various substantive requirements under HOEPA and other Dodd-Frank Act provisions. The Bureau noted that, in some cases, the Dodd-Frank Act requires that regulations implementing title XIV of the Dodd-Frank Act take effect within one year of issuance. The Bureau subsequently issued those rules in January 2013. The rules will take effect in January 2014.

In the proposal, the Bureau stated its belief that it would be preferable that any changes to the definition of finance charge and any related adjustments to regulatory triggers take effect at the same time, to provide for consistency and efficient systems modification. The Bureau also believed that it may be advantageous to consumers and creditors to make any such changes at the same time that creditors are implementing new title XIV requirements involving APR and points and fees thresholds, rather than waiting until the Bureau finalizes other aspects of the TILA-RESPA rulemaking, which relates primarily to disclosures. If the Bureau expanded the definition of finance charge, the Bureau believed this approach would likely provide the consumer benefits of the final rule at an earlier date as well as avoid requiring creditors to make two sets of systems and procedures changes focused on determining which loans trigger particular regulatory requirements. However, given that implementation of the disclosure-related elements of the TILA-RESPA Proposal would have required systems and procedures changes, the Bureau noted that there may be advantages to delaying any change in the definition of finance charge and any related adjustments to regulatory triggers until those changes occurred. The Bureau, therefore, requested comment on how to sequence the changes, and the benefits and costs to both consumers and industry of both approaches.

After the Bureau issued the TILA-RESPA Proposal, the Bureau received informal feedback regarding the timing of implementation and determined that it was appropriate to address the expanded finance charge proposal in conjunction with the TILA-RESPA Final Rule, rather than with the Bureau's Title XIV Rulemakings that were issued in January 2013. For this reason, the Bureau extended the comment period for comments related to the expanded finance charge and published its intention regarding the timing of a final rule related to the finance charge definition. *See* 77 FR 54843 (Sept. 6, 2012).

Comments

The Bureau received several hundred comments on this aspect of the TILA-RESPA Proposal. Industry commenters and one large consumer advocacy group commenter generally opposed finalizing the expanded finance charge at this time.[176] While some industry commenters supported the idea of improving the APR to make it a more useful metric for consumers and simplify the calculation, many asserted that the Bureau had not sufficiently considered the impact of the proposed provisions in light of the significant regulatory changes taking place as a result of the Bureau's Title XIV Rulemakings. They also asserted that sweeping changes to the finance charge calculation would be overly burdensome in light of the Bureau's other rulemakings. One large consumer advocacy group commenter, while generally supporting the expanded definition, argued that the Bureau should not adopt the expanded finance charge definition at this time because of complications that would arise due to the Bureau's other

[176] In addition to commenting on the threshold question of whether the Bureau should adopt a more inclusive finance charge, commenters also argued that certain specific exclusions from the finance charge should be retained or removed in the event the Bureau moves to a more inclusive finance charge (for example, voluntary credit insurance and title insurance charges). Because the Bureau is not adopting a more inclusive finance charge definition at this time, those comments are not specifically addressed here. The Bureau will evaluate those comments separately in the event the Bureau decides to propose the more inclusive finance charge at a later date.

rulemakings. That commenter stated also that the Bureau should further study the impact of the expanded finance charge on its other rulemakings.

Industry commenters and one consumer advocacy group commenter also cited the effect that a more inclusive finance charge would have on coverage thresholds under the HOEPA, HPML, and the ATR-QM rulemakings as a significant factor weighing against finalizing the proposal. Such commenters also noted the impact an expanded finance charge would have on State high-cost lending laws. These commenters asserted that, absent adjustments by the Bureau and State legislatures, the proposal could reduce access to mortgage credit, particularly for smaller loans and for borrowers at the lower end of the credit spectrum. For example, a national consumer advocacy group commenter estimated that the expanded finance charge would add approximately 0.9 percent to 3.5 percent to points and fees, depending on loan size and certain settlement cost assumptions, and would cause the APR to rise by roughly 0.10 percent to 0.52 percent, depending on loan size and interest rate. Small entities, including a national trade association of community banks, expressed concern that if the proposal resulted in more loans being classified as HOEPA loans or HPMLs, they may be forced to exit the mortgage market either due to increased compliance costs associated with these loans (such as the requirement to maintain escrow accounts for HPMLs) or because the loans will not be saleable on the secondary market. These concerns were echoed in comment letters from the U.S. House of Representatives Committee on Small Business and the Small Business Administration Office of Advocacy. Some industry commenters questioned whether the Bureau thoroughly considered the implications of the expanded finance charge on coverage thresholds as they would be revised by the Bureau’s Title XIV Rulemakings. Similar concerns were expressed by the Small Business Review Panel and industry feedback provided in response to the Small Business Review Panel

Outline. *See* Small Business Review Panel Report at 25. Some industry commenters also questioned the Bureau's authority to remove statutory exclusions from the finance charge.

Industry commenters (including numerous small entities), the U.S. House of Representatives Committee on Small Business, and the SBA also cited significant upfront implementation costs as a reason not to adopt the expanded finance charge definition. These commenters stated that to accommodate the changes, institutions would be required to reprogram, test, and implement significant changes to current systems, update written materials, and train employees. Commenters noted that this would be particularly burdensome for small creditors, would potentially cause some small creditors to exit the residential mortgage market, and could increase the cost of credit. One credit union commenter and a State credit union trade association estimated costs of $40,000 or more to implement the changes, in addition to the time needed for training. An organization that operates an APR calculation engine used by some credit unions estimated it would take between 500 and 1,000 hours of work time to update that system, in addition to staff training time. In addition, industry commenters cited ongoing compliance costs as a reason not to finalize the proposal. Numerous industry commenters and a national association of State housing agencies argued that the proposed finance charge definition would require maintaining separate systems for calculating the APR for mortgages and non-mortgages, which would increase compliance burdens.

Some industry commenters stated that including third-party closing costs that are not controlled by the creditor in the finance charge may increase litigation risk. For example, one industry trade association commenter noted that litigation risk would increase due to the increased possibility for calculation errors in a material disclosure associated with extended rescission rights. Similarly, one consumer advocacy group commenter noted that the simplified calculation would reduce homeowners' ability to use TILA violations to save their homes from foreclosure, presumably due to the fact that a simplified finance charge definition would lead to fewer technical violations of the rules regarding disclosure of the finance charge and APR, which are material disclosures that, if not provided accurately, toll the time limitations for invoking the right of rescission.

Some industry commenters, including national and State trade associations, stated that the Bureau has not sufficiently demonstrated the benefit of the proposed changes and urged the Bureau to conduct further analysis of the benefits of the expanded finance charge before finalizing the proposed rule. This is similar to industry feedback provided in response to the Small Business Review Panel Outline. For example, some commenters noted that the Bureau has not engaged in any consumer testing to determine if consumers will better understand the finance charge or APR disclosures using an expanded finance charge definition than under the current framework and suggested that the Bureau engage in further testing before finalizing the rule. Similarly, many industry commenters, including a national trade association of community banks, argued that a more inclusive finance charge would not improve consumer understanding of the APR because consumers do not understand the APR and do not use it when comparing loans. Some commenters cited the Bureau's own consumer testing and prior Board consumer testing cited in the TILA-RESPA Proposal as support for this position. They also argued that the aspect of the TILA-RESPA Proposal that would have emphasized other disclosures over the APR and finance charge disclosures undercuts any assertion by the Bureau that the expanded finance charge would aid consumer comprehension. Several small entity commenters argued that some consumers would be confused by the expanded finance charge because they are accustomed to the current APR.

On the other hand, most consumer advocacy group commenters and two State attorneys general supported the proposed changes to the finance charge, generally agreeing with the Board and Bureau analysis that the expanded finance charge would more accurately disclose the cost of credit and enhance consumers' ability to comparison shop, and would therefore benefit consumers. For example, one national non-profit organization focusing on low-income consumer issues noted that eliminating the numerous exclusions from the current definition of finance charge would simplify compliance and examinations, while discouraging fee manipulation. The State attorneys general likewise agreed that a more inclusive definition of finance charge would make it easier for consumers to compare loans and easier for lenders to calculate the APR.

Some industry commenters stated that having separate APR calculations for closed-end and open-end credit could contribute to consumer confusion, particularly for consumers comparing home equity lines of credit (HELOCs) with closed-end home equity loans. Similarly, consumer advocacy group commenters stated that the proposed changes should apply to all forms of credit or, at a minimum, both to HELOCs and closed-end mortgages.

One industry trade association commenter noted that it is not clear that the expanded finance charge would reduce the use of junk fees and third-party service providers because upfront fee-rate tradeoffs are largely determined in the capital markets and are independent of APR considerations. Some industry commenters argued that the proposed changes to the finance charge would lead to price fixing and other anticompetitive behavior by large institutions with the ability to influence settlement service provider fees. In contrast, smaller institutions that do not have the ability to assert such influence over third-party pricing would be priced out of the market. This would reduce consumer choice and raise prices in the long run. However, one consumer advocacy group commenter cited the current approach to the finance charge, which excludes certain third party charges, as creating hundreds of dollars in junk fees for consumers and noted that an expanded finance charge definition could reduce costs to consumers.

Industry commenters generally supported adjustments to coverage thresholds to mitigate the impact of an expanded finance charge, if the expanded finance charge were adopted. Most such commenters favored direct adjustments to the numeric APR-based thresholds over adopting the TCR as a new metric. However, one mortgage company commenter stated that the TCR is complicated, difficult to document, and would create compliance burden. On the other hand, most consumer advocacy group commenters and a joint letter from civil rights organizations opposed any adjustments to the APR-based thresholds to account for an expanded finance charge. Some consumer advocacy group commenters asserted that very few loans would be considered high-cost even under the new rules. These commenters asserted that creditors in these loans can and should reduce their closing costs or interest rate to escape that designation.[177]

Final Rule

For the reasons set forth below, the Bureau has determined not to finalize the proposed change to the definition of finance charge and instead to leave the current definition unchanged at this time. The Bureau will, instead, revisit this issue in conjunction with the assessment that it is required to do of each significant rule it issues no later than five years after the effective date of such rules under Dodd-Frank Act section 1022(d).

As described in the TILA-RESPA Proposal, the Bureau believes that an expanded finance charge definition could result in disclosures that more meaningfully represent the cost of

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[177] Comments regarding the broader definition of the finance charge or potential mitigation measures submitted to the other Title XIV Rulemakings are not specifically described here because the Bureau is not adopting the proposed amendment to the definition of the finance charge.

credit, ease compliance and examination burdens in the long run, and reduce the cost of credit for some consumers by discouraging creditors from shifting costs to fees that are excluded from the finance charge. However, before finalizing any changes to the finance charge definition, the Bureau believes it is appropriate to further study the potential impacts of the expanded finance charge under the regulatory regime revised by the Dodd-Frank Act, collect additional data on the impact of changes to the finance charge definition on APR, and evaluate the effect an expanded finance charge definition would have on consumer understanding of the finance charge and APR disclosures in light of the TILA-RESPA Final Rule.

Although changes to the finance charge definition are not being finalized at this time, the Bureau is committed to continuing to collect data and analyze the consumer benefits of an expanded finance charge, as well as the effect of an expanded finance charge on laws with coverage thresholds that are dependent on the finance charge and APR, including State high-cost loan statutes. As noted, the Bureau expects to revisit this issue in conjunction with the mandatory five-year review of the Bureau's Title XIV Rulemakings and the TILA-RESPA Final Rule under section 1022 of the Dodd-Frank Act. As described below, the Bureau believes that it may have access to additional data within the next five years which could be used to conduct such an analysis. To the extent the Bureau concludes that an expanded finance charge definition may be appropriate at that time, the Bureau would issue a new proposed rule, setting forth any new data relied upon, to provide the public an opportunity to comment on that data and on the Bureau's analysis of this issue.

The Bureau believes it is appropriate to postpone any changes to the finance charge definition until industry has fully implemented the Title XIV Rulemakings and the TILA-RESPA Final Rule and those rules have been in effect for a meaningful period of time. This approach would allow the Bureau to take into account the effects of those rules on the mortgage market and access to credit under the revised regulatory regime and allow industry to make changes to systems and processes, as appropriate, without being required subsequently to factor into such changes the increased finance charge and APRs that would result from finalization of the proposed definition of finance charge. As discussed above, an expanded finance charge definition would impact other rules that depend on the finance charge or APR to define coverage, including the Bureau's recently-issued rules related to HOEPA, ATR, Escrows, and Appraisals. For this and other reasons, the Bureau understands that each of its Dodd-Frank Act mortgage rulemakings, including the TILA-RESPA Final Rule, has the potential to affect aspects of the mortgage market, including loan pricing and the types and amounts of settlement charges and other fees that are typically associated with mortgage transactions. For example, the Dodd-Frank Act's three percent limit on points and fees for qualified mortgages may cause some creditors to restructure their current business or pricing models in order to remain below that threshold. The revised rules related to permissible changes in estimated settlement charges discussed below in the section-by-section analysis of § 1026.19(e) may have a similar effect.

As noted above, numerous industry commenters and a large consumer advocacy group commenter cited the Bureau's other rulemakings and the need to evaluate the proposed changes in light of the new regulatory regime as a significant factor in their assessment that the Bureau should not finalize the expanded finance charge definition at this time. The Bureau has considered the potential effects of the Bureau's recently-issued rules on the market and the comments received and determined it is appropriate to further study the expanded finance charge once industry has fully implemented the new rules and the market has adapted to those changes.

In addition, the Bureau currently lacks data to model, across a wide spectrum of the market, the impact of an expanded finance charge on APR. As discussed above, numerous commenters urged the Bureau to conduct further study of the impact of the expanded finance charge before finalizing that aspect of the TILA-RESPA Proposal. Because the Bureau cannot model the effect of an expanded finance charge on APR, the Bureau also cannot fully evaluate at this time whether, and to what extent, to adopt mitigation measures that would address the effect of an expanded finance charge on other rules that use the APR or finance charge as a metric to define coverage. Characterizing the impact of the expanded finance charge on APR requires an understanding of how the cost of fees and services vary with loan size and other observable loan characteristics. The relationship between characteristics such as loan size and interest rate and the difference between the APR under the current definition and the proposed expanded definition cannot be described by a simple formula. Changes to the APR using the formula for determining the APR under appendix J to Regulation Z are not monotonic. For example, the appraisal fee for a low-dollar value rural property may be higher than the appraisal fee for a high-dollar value suburban home, resulting in a larger associated increase in the APR for the lower-dollar value property. This makes the effect of an expanded finance charge on APR difficult to model without itemized data that spans a wide spectrum of the market.

As noted above, the Board’s 2009 Closed-End Proposal relied on a 2008 survey of closing costs conducted by Bankrate.com to assess the effect an expanded finance charge definition would have on APR. The TILA-RESPA Proposal did not provide a similar analysis, but noted that it was considering the 2010 version of the Bankrate.com survey as an appropriate dataset to model the impacts of the proposal, and requested additional data that would provide more representative information regarding closing and settlement costs. Since the TILA-RESPA Proposal was issued, the Bureau has determined that an analysis of the 2010 Bankrate.com data is not appropriate because the Bankrate.com survey focuses on closing costs for a single type of fixed rate loans, and also not feasible because the Bureau does not have access to the survey's micro data of itemized charges. In addition, in response to the request for data in the TILA-RESPA Proposal, the Bureau did not receive data with which it could conduct an analysis of the impact of the expanded finance charge on APRs for a wide variety of loans.

Since the proposal, however, the Bureau received voluntary data submissions of electronic RESPA settlement statement information from three large lenders, a possibility discussed in the TILA-RESPA Proposal. *See* 77 FR 51116, 51270 (Aug. 23, 2012). This voluntary data submission is the only data the Bureau currently has that itemizes fees and charges. Using this data, the Bureau was able to take a preliminary step in considering the economy-wide impact of the proposed changes on the APR and on the coverage of other rules. Analysis of the fixed rate first lien loans in the data did not show a strong correlation between the increase in the finance charge associated with the proposed expanded definition and the APR resulting from such increase, or a strong correlation between the increase in the finance charge and the loan amount. This is consistent with the fact that increases in the finance charge do not result in affine (*i.e.*, correlated or linear) transformations of the APR. Also, since the data is from three lenders, it is not sufficient for the Bureau to model the effect of the expanded finance charge on APRs across the market. For example, to the extent that these three lenders operate in particular segments of the market or have firm-specific conventions for how they itemize charges and fees, the data provided is not representative of the national mortgage market. A more thorough analysis of the effect of an expanded finance charge definition on APR would require more representative data that includes itemized settlement charges, which is not currently available to the Bureau.

The Bureau expects that new sources of data on itemized settlement costs may be available in the next five years. For example, the Bureau believes that electronic retention of data from the integrated disclosure forms may become common practice. If this is the case, more robust data may be available to the Bureau for analysis. In addition, if particular settlement charges are discernible from new data standards required to be reported under HMDA by Dodd-Frank Act section 1094 (which amended section 304 of HMDA), the distribution of these charges for HMDA reporters may be leveraged to construct estimates of the impacts of including or excluding these costs from the APR.[178] These sources of data may assist the Bureau in conducting an analysis of the effect of changes to the finance charge on APR and on coverage thresholds.

As noted in the proposal, the Bureau believes that creditors could ultimately benefit from a streamlined finance charge definition that is simpler to calculate than the current definition, particularly given the increased significance of coverage thresholds under the Title XIV Rulemakings. However, the Bureau does not believe it is appropriate to finalize such changes before the Bureau has had the opportunity to study the effect of the expanded finance charge and APR across the mortgage market and using the coverage thresholds as revised by the Dodd-Frank Act and the Bureau's recently-issued Title XIV Rulemakings.

Further, postponing consideration of any changes to the expanded finance charge definition would allow the Bureau to continue to study the effect of the expanded finance charge

[178] Section 1094 of the Dodd-Frank Act amends HMDA to expand the scope of information relating to mortgage applications and loans that must be compiled, maintained, and reported under HMDA, including the ages of loan applicants and mortgagors, information relating to the points and fees payable at origination, the difference between the annual percentage rate associated with the loan and benchmark rates for all loans, the term of any prepayment penalty, the value of real property to be pledged as collateral, the term of the loan and of any introductory interest rate for the loan, the presence of contract terms allowing non-amortizing payments, the origination channel, and the credit scores of applicants and mortgagors. The Bureau is in the prerule stage of incorporating these amendments to HMDA into its Regulation C, 12 CFR part 203, which implements HMDA.

on consumer understanding of the APR disclosure. As described in the TILA-RESPA Proposal, the Bureau believes that an expanded finance charge definition could increase consumer understanding of the APR disclosures by more accurately reflecting the cost of credit to consumers. However, the Bureau also recognizes concerns by some commenters that, even under an expanded finance charge definition, the APR is limited in its usefulness as a measure of the cost of credit. For example, it is not always the case that a loan with a lower APR is the "best" loan for a consumer because consumers have different time horizons with respect to their financing decisions and because loans with different interest rate-point combinations will have different APRs. A consumer who expects to sell or refinance a property within a short time horizon may benefit from making a different rate-point tradeoff than a consumer who expects to hold the loan long term. For this reason, the Bureau believes that a rule adopting an expanded finance charge definition would likely need to be accompanied by a broader initiative to assist consumer understanding of the APR. Postponing changes to the finance charge definition will allow the Bureau to study consumer understanding of the disclosures further and, if appropriate, develop other measures to aid consumer understanding that could supplement a revised finance charge definition.

In addition, because of consumer testing that shows that consumers do not rely primarily on the APR when shopping for a loan, and the statutory mandate to combine the disclosures required by TILA and RESPA, the TILA-RESPA Final Rule emphasizes on the first page of the Loan Estimate and Closing Disclosure information that consumers more readily understand (such as the interest rate and the cash to close amount). To reduce potential confusion between the APR and the interest rate and to focus on more readily understandable information, the APR is on the final page of the integrated disclosures. *See* the section-by-section analysis of

§§ 1026.37(l)(2) and 1026.38(o)(4). The Bureau believes it is appropriate to evaluate consumer benefits of an expanded finance charge in light of these changes to the disclosure. However, the Bureau has not tested the APR disclosure on the integrated forms using an expanded finance charge definition, so the Bureau may determine it is appropriate to conduct additional testing of the integrated disclosures with an expanded finance charge before making a determination as to whether changes to the finance charge definition are appropriate.

The Bureau also recognizes that the proposed change to the definition of finance charge would create upfront implementation costs for creditors required to update systems and train staff on the new calculations. As discussed above, numerous commenters suggested that these burdens are significant, particularly for small institutions, and would be especially burdensome in light of the costs and burdens of implementing the Bureau's Title XIV Rulemakings and the TILA-RESPA Final Rule. These commenters stated that industry is under enormous strain to absorb and implement the Bureau's Title XIV Rulemakings, which are required by the Dodd-Frank Act, and that the Bureau should delay discretionary changes to the rules until industry has implemented the required changes. Upfront implementation costs could also be increased if the Bureau were to adopt certain mitigation measures to address the effect of an expanded finance charge on coverage thresholds for other rules. As discussed in the TILA-RESPA Proposal, the Bureau believes that the costs to update systems could be mitigated for some creditors if undertaken in conjunction with implementation of the TILA-RESPA Final Rule. However, some commenters have stated, and the Bureau has heard from other feedback from small creditors, that small creditors may exit the residential mortgage market if upfront implementation costs are too burdensome, which could increase the cost of credit for some consumers. For this reason, the Bureau believes it is appropriate to postpone finalizing any changes to the finance charge definition until the Bureau's other mortgage-related Dodd-Frank Act rulemakings are fully implemented and to evaluate the potential benefits and implementation burdens at that time.

Finally, postponing consideration of changes to the finance charge definition will allow the Bureau to study an additional expansion of the finance charge definition for HELOCs, which could result in a single APR for mortgage credit. This could aid comparison of closed-end and open-end mortgage credit for consumers and address concerns expressed by some commenters that having one APR calculation for open-end mortgage credit and a separate definition for closed-end mortgage credit could impair consumers' ability to compare closed-end home equity loans with HELOCs and increase compliance costs for creditors.

For the aforementioned reasons, the Bureau is not finalizing the expanded definition of the finance charge at this time. The Bureau will study the issue in connection with its five-year review of the TILA-RESPA Final Rule and its other Title XIV Rulemakings under Dodd-Frank Act section 1022. In the event the Bureau determines it may be appropriate to move forward with an expanded finance charge definition, the Bureau will issue a new proposal and publish for public comment any new data in support of that proposal before issuing a final rule.

Section 1026.17 General Disclosure Requirements

In the TILA-RESPA Proposal, the Bureau proposed conforming amendments to § 1026.17 to reflect the proposed rules regarding the format, content, and timing of disclosures for closed-end transactions secured by real property, other than reverse mortgages subject to § 1026.33, in proposed §§ 1026.37 and 1026.38.

17(a) Form of Disclosures

TILA section 128(b)(1) provides that the disclosures required by TILA sections 128(a) and 106(b), (c), and (d) must be conspicuously segregated from all other terms, data, or information provided in connection with the transaction, including any computations or itemizations. 15 U.S.C. 1638(a), (b)(1); 15 U.S.C. 1605(b), (c), (d). In addition, TILA section 122(a) requires that the "annual percentage rate" and "finance charge" disclosures be more conspicuous than other terms, data, or information provided in connection with the transaction, except information relating to the identity of the creditor. 15 U.S.C. 1632(a). Current § 1026.17(a) implements these statutory provisions. Current § 1026.17(a)(1) implements TILA section 128(b)(1) by providing that closed-end credit disclosures must be grouped together and segregated from all other disclosures and must not contain any information not directly related to the disclosures. Current § 1026.17(a)(2) implements TILA section 122(a) for closed-end credit transactions by requiring that the terms "annual percentage rate" and "finance charge," together with a corresponding amount or percentage rate, be disclosed more conspicuously than any disclosure other than the creditor's identity.

The Bureau proposed to revise the introductory language to § 1026.17(a) to reflect the fact that special rules apply to the disclosures required by § 1026.19(e), (f), and (g), by providing that § 1026.17(a) is inapplicable to those disclosures. As discussed below, the Bureau proposed to implement the grouping and segregation requirements of TILA section 128(b)(1) in §§ 1026.37(o) and 1026.38(t). Further, for the reasons set forth in the section-by-section analyses of §§ 1026.37(l)(3) and 1026.38(o)(2) and (4), the Bureau proposed to use its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to modify the requirements of TILA section 122(a) for transactions subject to § 1026.19(e), (f), and (g). Proposed comment 17-1 would have stated that, for the disclosures required by proposed § 1026.19(e), (f), and (g), rules regarding the disclosures' form are found in §§ 1026.19(g), 1026.37(o), and 1026.38(t). In addition, proposed comment 17(a)(1)-7 would have reflected the special disclosure rules for transactions subject to § 1026.18(g) or (s).

The Bureau did not receive comments regarding the proposed changes to the introductory language to § 1026.17(a) or proposed comments 17-1 and 17(a)(1)-7. For the reasons discussed and using the authority described in the proposed rule, the Bureau is finalizing § 1026.17(a) and comments 17-1 and 17(a)(1)-7 substantially as proposed.

17(b) Time of Disclosures

TILA section 128(b)(1) provides that the disclosures required by TILA section 128(a) shall be made before credit is extended. 15 U.S.C. 1638(b)(1). Special timing rules for transactions subject to RESPA are found in TILA section 128(b)(2). 15 U.S.C. 1638(b)(2). Current § 1026.17(b) implements TILA section 128(b)(1) by requiring creditors to make closed-end credit disclosures before consummation. The special timing rules for transactions subject to RESPA are implemented in current § 1026.19(a). As discussed below, the Bureau proposed special timing rules for the disclosures required by § 1026.19(e), (f), and (g) in those provisions. Proposed § 1026.17(b) would have reflected these special rules by providing that § 1026.17(b) is inapplicable to the disclosures required by § 1026.19(e), (f), and (g). Proposed comment 17-1 would have stated that, for to the disclosures required by § 1026.19(e), (f), and (g), rules regarding timing are found in those sections.

The Bureau did not receive comments regarding the proposed changes to § 1026.17(b) or proposed comment 17-1. For the reasons discussed in the proposed rule, the Bureau is finalizing § 1026.17(b) and comment 17-1 substantially as proposed. However, as discussed below in the section-by-section analysis of § 1026.20(e), the Bureau is finalizing separate rules regarding the timing of the Post-Consummation Escrow Cancellation Disclosure required by that section. For that reason, the Bureau is also revising § 1026.17(b) and comment 17-1 to reflect the fact that special rules apply to the disclosure required by § 1026.20(e). As adopted, § 1026.17(b) provides that it does not apply to the disclosures required by § 1026.19(e), (f), and (g) and § 1026.20(e).

17(c) Basis of Disclosures and Use of Estimates

17(c)(1)

Current § 1026.17(c)(1) requires that the disclosures that creditors provide pursuant to subpart C of Regulation Z reflect the terms of the legal obligation between the parties. The commentary to current § 1026.17(c)(1) provides guidance to creditors regarding the disclosure of specific transaction types and loan features.

As discussed more fully in the section-by-section analysis of §§ 1026.37 and 1026.38, the Bureau proposed to integrate the disclosure requirements of TILA and sections 4 and 5 of RESPA in the Loan Estimate that creditors must provide to consumers within three business days after receiving the consumer's application and the Closing Disclosure that creditors must provide to consumers at least three business days prior to consummation. Some disclosures required by RESPA pertain to services performed by third parties, other than the creditor. Accordingly, the Bureau proposed conforming amendments to the commentary to § 1026.17(c) to clarify that the "parties" referred to in the commentary to § 1026.17(c) are the consumer and the creditor and that the "agreement" referred to in the commentary to § 1026.17(c) is the legal obligation between the consumer and the creditor. The proposed conforming amendments to the commentary also would have clarified that the "disclosures" referred to in the commentary to current § 1026.17(c) are the finance charge and the disclosures affected by the finance charge. Finally, the proposed conforming amendments to the commentary would have extended existing guidance on special disclosure rules for transactions subject to § 1026.18(s) to reflect the addition of new special rules under § 1026.19(e) and (f).

The Bureau also proposed amendments to the commentary to § 1026.17(c)(1) to address areas of industry uncertainty regarding TILA disclosures. First, the Bureau proposed to revise comment 17(c)(1)-1 to provide the general principle that disclosures based on the assumption that the consumer will abide by the terms of the legal obligation throughout its term comply with § 1026.17(c)(1). In addition, the Bureau proposed to revise comments 17(c)(1)-3 and -4 regarding third-party and consumer buydowns, respectively. Under existing Regulation Z, whether the effect of third-party or consumer buydowns are disclosed depends on State law. To address uncertainty, the Bureau proposed to revise the examples in comments 17(c)(1)-3 and -4 to clarify that, in the disclosure of the finance charge and other disclosures affected by the finance charge, third-party buydowns must be reflected as an amendment to the contract's interest rate provision if the buydown is reflected in the credit contract between the consumer and the creditor and that consumer buydowns must always be reflected as an amendment to the contract's interest rate provision.

The Bureau did not receive comments on comments 17(c)(1)-1, -3, or -4. Therefore, for the reasons discussed in the proposed rule, the Bureau is finalizing those comments as proposed. However, the Bureau is finalizing an additional change to comment 17(c)(1)-1 to make clear that the Post-Consummation Escrow Cancellation Disclosure required by § 1026.20(e) must reflect the credit terms to which the parties are legally bound when the disclosure is provided, rather than at the outset of the transaction, because that disclosure is provided to consumers after consummation. This clarification is consistent with the comment's existing treatment of the post-consummation disclosure required by § 1026.20(c) (variable-rate adjustments) and the comment's treatment of the post-consummation disclosure required by § 1026.20(d) (initial interest rate adjustment notice) under the Bureau's 2013 Mortgage Servicing Final Rule amending Regulation Z which will take effect on January 10, 2014.[179] For a discussion of the Post-Consummation Escrow Cancellation Disclosure, see the section-by-section analysis of § 1026.20(e), below.

The Bureau also proposed new comment 17(c)(1)-19, regarding disclosure of rebates and loan premiums offered by a creditor. In its 2009 Closed-End Proposal, the Board proposed to revise comment 18(b)-2, which provides guidance regarding the treatment of rebates and loan premiums for the amount financed calculation required by § 1026.18(b). 74 FR 43385. Comment 18(b)-2 primarily addresses credit sales, such as automobile financing, and provides that creditors may choose whether to reflect creditor-paid premiums and seller- or manufacturer-paid rebates in the disclosures required by § 1026.18. The Board stated its belief that such premiums and rebates are analogous to buydowns because they may or may not be funded by the creditor and reduce costs that otherwise would be borne by the consumer. 2009 Closed-End Proposal, 74 FR 43256. Accordingly, their impact on the § 1026.18 disclosures properly depends on whether they are part of the legal obligation, in accordance with § 1026.17(c)(1) and its commentary. The Board therefore proposed to revise comment 18(b)-2 to clarify that the disclosures, including the amount financed, must reflect loan premiums and rebates regardless of their source, but only if they are part of the legal obligation between the creditor and the consumer. The Board also proposed a parallel comment under the section requiring disclosure of the amount financed for transactions subject to the proposed, separate disclosure scheme for transactions secured by real property or a dwelling. 74 FR 43417 (proposed comment

[179] *See* 78 FR 10902, 11017 (Feb. 14, 2013).

38(e)(5)(iii)-2).

In the TILA-RESPA Proposal, the Bureau stated its agreement with the Board's reasoning in proposing the revisions to comment 18(b)-2 that the disclosures must reflect loan premiums and rebates, even if paid by a third party such as a seller or manufacturer, but only if they are part of the legal obligation between the creditor and the consumer. The Bureau noted, however, that the comment's guidance extends beyond the calculation of the amount financed. For example, the guidance on whether and how to reflect premiums and rebates applies equally to such disclosures as the amount financed, the annual percentage rate, the projected payments table, interest rate and payment summary table, or payment schedule, as applicable, and other disclosures affected by those disclosures. The Bureau therefore proposed to place the guidance in the commentary to § 1026.17(c)(1), as that section is the basis for the underlying principle that the impact of premiums and rebates depends on the terms of the legal obligation.

Several industry trade association commenters noted that there is no clear definition of what is considered a "premium or a rebate" under proposed comment 17(c)(1)-19. Those commenters noted that it is not clear whether any amount that a creditor would pay to a consumer is considered a premium or rebate. For example, if a credit that may be used to pay closing costs is subject to the comment, it is not clear whether the comment requires considering the credit to be applied first to finance charges and then to closing costs that are not finance charges. One such commenter noted that, without uniformity to these terms, borrowers may have difficulty comparing competing offers. Other such commenters recommended clarifying that if a creditor provides a specific credit against a charge that is included in the finance charge, the credit should reduce the total finance charge; whereas if a creditor provides a general credit that the consumer can use to pay closing costs, whether or not those closing costs are included in the finance charge, the credit should lower the finance charge.

The Bureau has considered the comments received regarding new comment 17(c)(1)-19. However, as noted above, comment 17(c)(1)-19 is intended only to clarify existing comment 18(b)-2, that the disclosures must reflect loan premiums and rebates, even if paid by a third party such as a seller or manufacturer, but only if they are part of the legal obligation between the creditor and the consumer. Accordingly, the Bureau is finalizing comment 17(c)(1)-19 as proposed.

Among the proposed conforming amendments, which are noted above, was an amendment to comment 17(c)(1)-10 to reflect the special rules under § 1026.19(e) and (f). Comment 17(c)(1)-10 provides that, in determining the index value used to calculate the disclosures when creditors set an initial interest rate that is not calculated using the index or formula for later adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged, and for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. The comment uses a 45-day look-back period as an example. Although not specifically addressed in the proposed rule, several industry trade association commenters noted that, because Dodd-Frank Act section 128A requires an early notice of the first adjustment on hybrid adjustable rate mortgages, it is likely that, for some adjustable rate mortgages, the look-back period for the first adjustment may be longer than the look-back period for subsequent adjustments. For that reason, the commenters asserted that it would be helpful for commentary to permit the use of the longer look-back period.

After consideration of the comments received, the Bureau is adopting comment

1026.17(c)(1)-10 generally as proposed. The Bureau notes that comment 1026.17(c)(1)-10 is broad and does not specifically prohibit or permit creditors to use a particular look-back period where a transaction is structured to have multiple adjustments with varying look-back periods, so it is not clear that additional commentary regarding the use of specific look-back periods is necessary. Further, the Bureau did not propose changes or solicit comment on comment 1026.17(c)(1)-10 in the TILA-RESPA Proposal with respect to how it might relate the disclosure requirements of Dodd-Frank Act section 128A, so the Bureau does not believe that it would be appropriate to finalize such a change at this time. However, the Bureau is making certain technical changes to proposed comment 1026.17(c)(1)-10 to clarify that the composite rate would apply to the "in five years" disclosure pursuant to § 1026.37(l)(1) and the total interest percentage disclosure pursuant to §§ 1026.37(1)(3) and 1026.38(o)(5), in addition to the disclosures required by § 1026.18(g) and (s) and §§ 1026.37(c) and 1026.38(c), which were included in the proposed conforming amendments.

17(c)(2)

Current § 1026.17(c)(2) and its commentary contain general rules regarding the use of estimates. The Bureau proposed conforming amendments to the commentary to § 1026.17(c)(2) to be consistent with the special disclosure rules for closed-end mortgage transactions subject to proposed § 1026.19(e) and (f).

Comment 17(c)(2)(i)-1 would have provided guidance to creditors on the basis for estimates. The proposed rule would have amended this comment to specify that it applies except as otherwise provided in §§ 1026.19, 1026.37, and 1026.38, and that creditors must disclose the actual amounts of the information required to be disclosed pursuant to § 1026.19(e) and (f), subject only to the estimation and redisclosure rules in those sections. The proposed rule also would have revised comment 17(c)(2)(i)-2, which gives guidance to creditors on labeling estimated disclosures, to provide that, for the disclosures required by § 1026.19(e), use of the Loan Estimate form H-24 of appendix H, pursuant to § 1026.37(o), satisfies the requirement that the disclosure state clearly that it is an estimate. In addition, consistent with the proposed revisions to comment 17(c)(1)-1, the proposed rule would have revised comment 17(c)(2)(i)-3, which provides guidance to creditors regarding disclosures in simple interest transactions, to reflect that the comment applies only to the extent that it does not conflict with proposed § 1026.19. Proposed comment 17(c)(2)(i)-3 also would have clarified that, in all cases, creditors must base disclosures on the assumption that payments will be made on time and in the amounts required by the terms of the legal obligation, disregarding any possible differences resulting from consumers' payment patterns. Finally, proposed comment 17(c)(2)(ii)-1, regarding disclosure of per diem interest, would have provided that the creditor shall disclose the actual amount of per diem interest that will be collected at consummation, subject only to the disclosure rules in § 1026.19(e) and (f).

The Bureau did not receive comments regarding the proposed changes to § 1026.17(c)(2). For the reasons discussed in the proposed rule, the Bureau is finalizing § 1026.17(c)(2) as proposed. However, the Bureau is revising comment 17(c)(2)(i)-2 to clarify that the use of the Closing Disclosure form H-25 of appendix H satisfies the requirement that the disclosure state clearly that it is an estimate. Under proposed § 1026.19(f), creditors would have been required to disclose the actual terms of the transaction on the Closing Disclosure. For the reasons discussed below in the section-by-section analysis of § 1026.19(f), however, the final rule requires creditors to disclose the actual terms of the transaction on the Closing Disclosure, but also provides that if any information necessary for disclosure of the actual terms is unknown to the creditor, the creditor shall make such disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer. To account for the fact that the Closing Disclosure may reflect some estimated terms pursuant to § 1026.19(f), comment 17(c)(2)(i)-2, as adopted, provides that, for the disclosures required by § 1026.19(e) or (f), use of the Loan Estimate form H-24 of appendix H to Regulation Z pursuant to § 1026.37(o) or the Closing Disclosure form H-25 of appendix H to Regulation Z pursuant to § 1026.38(t), as applicable, satisfies the requirement that the disclosure state clearly that the disclosure is an estimate.

17(c)(4)

The proposed rule would have revised comment 17(c)(4)-1 to clarify that creditors may disregard payment period irregularities when disclosing the payment summary tables pursuant to §§ 1026.18(s), 1026.37(c), and 1026.38(c), in addition to the payment schedule under § 1026.18(g) discussed in the existing comment.

The Bureau did not receive comments regarding the proposed changes to § 1026.17(c)(4). For the reasons discussed in the proposed rule, the Bureau is finalizing § 1026.17(c)(4) as proposed.

17(c)(5)

Current § 1026.17(c)(5) and its commentary contain general rules regarding the disclosure of demand obligations. The proposed rule would have revised comment 17(c)(5)-2, which addresses obligations whose maturity date is determined by a future event, to reflect the fact that special rules would have applied to the disclosures required by § 1026.19(e) and (f). In addition, the proposal would have revised comment 17(c)(5)-3, regarding transactions that convert to demand status only after a fixed period, to delete obsolete references to specific loan programs and to update cross-references. Finally, the proposal would have revised comment 17(c)(5)-4, regarding balloon payment mortgages, to reflect the fact that special rules would have applied to the disclosure of balloon payments in the projected payments tables required by §§ 1026.37(c) and 1026.38(c).

The Bureau did not receive comments regarding the proposed changes to § 1026.17(c)(5). For the reasons discussed in the proposed rule, the Bureau is finalizing § 1026.17(c)(5) as proposed.

17(d) Multiple Creditors; Multiple Consumers

Current § 1026.17(d) addresses transactions that involve multiple creditors or consumers. The proposed rule would have revised comment 17(d)-2, regarding multiple consumers, to clarify that the early disclosures required by § 1026.19(a), (e), or (g), as applicable, need be provided to only one consumer who will have primary liability on the obligation. Material disclosures, as defined in § 1026.23(a)(3)(ii), under § 1026.23(a) and the notice of the right to rescind required by § 1026.23(b), however, would have been required to be given before consummation to each consumer who has the right to rescind, including any such consumer who is not an obligor. As stated in the proposal and in the Board's 2010 Mortgage Proposal, the purpose of the TILA section 128 requirement that creditors provide early and final disclosures is to ensure that consumers have information specific to their loan to use while shopping and evaluating their loan. *See* 75 FR 58585. On the other hand, the purpose of the TILA section 121(a) requirement that each consumer with a right to rescind receive disclosures regarding that right is to ensure that each such consumer has the necessary information to decide whether to exercise that right. *Id*. For this reason, the proposed rule would have required creditors to provide all consumers who have the right to rescind with the material disclosures under

§§ 1026.18 and 1026.38 and the notice of the right to rescind required by § 1026.23(b), even if such consumer is not an obligor.

Several industry trade association commenters noted that it is not clear under proposed comment 17(d)-2 whether the Closing Disclosure required by proposed § 1026.19(f) would be required to be provided to one consumer, or whether the fact that § 1026.19(f) is not specifically mentioned in the comment means that the Closing Disclosure must be provided to all consumers. The commenters noted that giving the Closing Disclosure to all consumers would be an operational burden, and requested clarification regarding the requirements of 1026.17(d) with regard to the Closing Disclosure.

The proposed changes to comment 17(d)-2 were intended only to clarify how the existing rule regarding multiple consumers applies to the integrated disclosures and were not intended to alter existing guidance in comment 17(d)-2. However, after consideration of the comments received, the Bureau is finalizing revised language in comment 17(d)-2 to provide further clarification regarding the provision of the Closing Disclosure. Specifically, comment 17(d)-2 provides that when two consumers are joint obligors with primary liability on an obligation, the early disclosures required by § 1026.19(a), (e), or (g), as applicable, may be provided to any one of them. In rescindable transactions, the disclosures required by § 1026.19(f) must be given separately to each consumer who has the right to rescind under § 1026.23. In transactions that are not rescindable, the disclosures required by § 1026.19(f) may be provided to any consumer with primary liability on the obligation. With respect to commenters’ concerns that providing the Closing Disclosure to all consumers would be an operational burden, the Bureau notes that separate disclosures must be provided to each consumer only in rescindable transactions and that the commentary is consistent with existing guidance in comment 17(d)-2. In addition, the fact that material disclosures are to be provided to all consumers with a right to rescind would mean that creditors would otherwise be required to provide these disclosures separately, using a separate document, if they did not provide them using the Closing Disclosure. As such, providing a duplicate Closing Disclosure to all consumers with a right to rescind may in fact reduce operational burden, because creditors would not need to create a separate document for such disclosures. The Bureau also acknowledges that some creditors may desire that each obligor to a transaction subject to § 1026.19(f) receive a Closing Disclosure, to obtain a signature of customary recitals or certifications that are appended to the disclosure pursuant to § 1026.38(t)(5).

17(e) Effect of Subsequent Events

Current § 1026.17(e) provides rules regarding when a subsequent event makes a disclosure inaccurate and requires a new disclosure. The proposed rule would have revised comment 17(e)-1 to clarify that special rules apply to transactions subject to proposed § 1026.19(e) and (f). The Bureau did not receive comments regarding the proposed changes to § 1026.17(e). For the reasons discussed in the proposed rule, the Bureau is finalizing § 1026.17(e) as proposed, with a minor modification for clarity to refer to the post-consummation disclosure requirements under § 1026.19(f).

17(f) Early Disclosures

Current § 1026.17(f) contains rules regarding when a creditor must redisclose after providing disclosures prior to consummation. As discussed in the section-by-section analyses of § 1026.19(a), (e), and (f), under the proposal, special timing requirements would have applied for transactions subject to those sections. Accordingly, § 1026.17(f) would have been revised to reflect the fact that the general early disclosure rules in § 1026.17(f) would be subject to the special rules in § 1026.19(a), (e), and (f). In addition, comments 17(f)-1 through -4 would have been revised to conform to the special timing requirements under proposed § 1026.19(a) or (e) and (f).

The Bureau did not receive comments regarding the proposed changes to § 1026.17(f). For the reasons discussed in the proposed rule, the Bureau is finalizing § 1026.17(f) as proposed.

17(g) Mail or Telephone Orders—Delay in Disclosures

Current § 1026.17(g) and its commentary permit creditors to delay disclosures for transactions involving mail or telephone orders until the first payment is due if specific information, including the principal loan amount, total sale price, finance charge, annual percentage rate, and terms of repayment is provided to the consumer prior to the creditor's receipt of a purchase order or request for extension of credit. As discussed in the section-by-section analyses of § 1026.19(a), (e), and (f), the Bureau proposed special timing requirements for transactions subject to those provisions. Accordingly, the Bureau proposed to revise § 1026.17(g) and comment 17(g)-1 to clarify that § 1026.17(g) does not apply to transactions subject to § 1026.19(a) or (e) and (f).

The Bureau did not receive comments regarding the proposed changes to § 1026.17(g). For the reasons discussed in the proposed rule, the Bureau is finalizing § 1026.17(g) as proposed, with technical changes to §§ 1026.17(g) and (h) to clarify that those sections do not apply to mortgage disclosures made in compliance with § 1026.19(e), (f), and (g), and to comment 17(g)-1 to clarify that § 1026.17(g) does not apply to transactions subject to § 1026.19(a) or (e) and (f).

17(h) Series of Sales—Delay in Disclosures

Current § 1026.17(h) and its commentary permit creditors to delay disclosures until the due date of the first payment in transactions in which a credit sale is one of a series made under an agreement providing that subsequent sales may be added to the outstanding balance. As discussed in the section-by-section analyses of § 1026.19(a), (e), and (f), the Bureau proposed special timing requirements for transactions subject to those provisions. Accordingly, the Bureau proposed to revise § 1026.17(h) and comment 17(h)-1 to clarify that § 1026.17(h) does not apply to transactions subject to § 1026.19(a) or (e), (f), and (g).

The Bureau did not receive comments regarding the proposed changes to § 1026.17(h). For the reasons discussed in the proposed rule, the Bureau is finalizing § 1026.17(h) as proposed, with a technical change to comment 17(h)-1 to clarify that § 1026.17(h) does not apply to transactions subject to § 1026.19(a) or (e) and (f).

Section 1026.18 Content of Disclosures

Section 1026.18 sets forth the disclosure content for closed-end consumer credit transactions. As discussed in more detail below, the Bureau proposed to establish separate disclosure requirements for closed-end transactions secured by real property, other than reverse mortgage transactions, through proposed § 1026.19(e) and (f). For that reason, the Bureau proposed to amend § 1026.18's introductory language to provide that its disclosure content requirements would apply only to closed-end transactions other than mortgage transactions subject to proposed § 1026.19(e) and (f).

The Bureau did not receive comments on this proposed amendment to the introductory language to § 1026.18, although the Bureau did receive comments regarding the proposed scope of the integrated disclosures required by §§ 1026.37 and 1026.38, which are discussed in the section-by-section analysis of § 1026.19, below. For the reasons discussed in the proposed rule, the Bureau is finalizing the revisions to the introductory language to § 1026.18 as proposed.

The Bureau also proposed to add a new comment 18-3 which would have clarified that, because of the proposed exclusion for transactions subject to § 1026.19(e) and (f), the disclosures required by § 1026.18 would have applied only to closed-end transactions that are unsecured or secured by personal property (including dwellings that are not also secured by real property) and to reverse mortgages. The comment also would have clarified that, for unsecured transactions and transactions secured by personal property that is not a dwelling, creditors must disclose a payment schedule under § 1026.18(g), and for other transactions that are subject to § 1026.18, creditors must disclose an interest rate and payment summary table under § 1016.18(s), as adopted by the Board's MDIA Interim Rule. 75 FR 58470, 58482-84. The comment would have included a cross-reference to comments 18(g)-6 and 18(s)-4 for additional guidance on the applicability to different transaction types of § 1026.18(g) or (s) and proposed § 1026.19(e) and (f). Finally, the comment would have clarified that, because § 1026.18 would not have applied to most transactions secured by real property, references in the section and its commentary to "mortgages" refer only to transactions secured by personal property that is a dwelling and is not also secured by real property and to reverse mortgages, as applicable.

The Bureau did not receive comments on this aspect of the proposed rule. For the reasons discussed in the proposed rule, the Bureau is finalizing comment 18-3 as proposed.

18(b) Amount Financed

Section 1026.18(b) addresses the calculation and disclosure of the amount financed for closed-end transactions. Comment 18(b)-2 currently provides that creditors may choose whether to reflect creditor-paid premiums and seller- or manufacturer-paid rebates in the disclosures required by § 1026.18. For the reasons discussed under the section-by-section analysis of § 1026.17(c)(1), above, the Bureau proposed to remove comment 18(b)-2 and place revised guidance regarding rebates and loan premiums in proposed comment 17(c)(1)-19.

Several industry commenters requested clarification regarding the definition of "premium" or "rebate" in proposed comment 17(c)(1)-19. For a discussion of those comments, see the section-by-section analysis of § 1026.17(c)(1), above. For the reasons discussed in the proposed rule and in the section-by-section analysis of § 1026.17(c)(1), the Bureau is removing comment 18(b)-2 as proposed.

18(b)(2)

The Bureau proposed certain conforming changes to comment 18(b)(2)-1, which addresses amounts included in the amount financed calculation that are not otherwise included in the finance charge. As discussed above in the section-by-section analysis of § 1026.4, the TILA-RESPA Proposal included a proposal to adopt a simpler and more inclusive definition of the finance charge. Under that aspect of the proposal, references to real estate settlement charges and premiums for voluntary credit life and disability insurance in comment 18(b)(2)-1 would have been inappropriate. Accordingly, proposed comment 18(b)(2)-1 would have removed those references and substituted appropriate examples.

As discussed above in the section-by-section analysis of § 1026.4, the Bureau is not finalizing the proposed revisions to the definition of the finance charge at this time. Accordingly, the Bureau is not finalizing the proposed changes to comment 18(b)(2)-1.

18(c) Itemization of Amount Financed

Section 1026.18(c) requires an itemization of the amount financed and provides guidance on the amounts that must be included in the itemization. The Bureau proposed certain conforming amendments to two comments under § 1026.18(c). Under the proposal, § 1026.18 disclosures, including the itemization of amount financed under § 1026.18(c), would have been required only for closed-end transactions that are not secured by real property and reverse mortgages; transactions secured by real property other than reverse mortgages would have been subject to the disclosure content in proposed §§ 1026.37 and 1026.38. The Bureau therefore proposed technical revisions to comments 18(c)-4 and 18(c)(1)(iv)-2 to limit those comments' discussions of the RESPA disclosures and their interaction with § 1026.18(c) to reverse mortgages.

The Bureau did not receive comments on this aspect of the proposed rule. For the reasons discussed in the proposed rule, the Bureau is finalizing the technical revisions to comments 18(c)-4 and 18(c)(1)(iv)-2 as proposed.

18(f) Variable Rate

18(f)(1)

18(f)(1)(iv)

Section 1026.18(f)(1)(iv) requires that, for variable-rate transactions not secured by a consumer's principal dwelling and variable-rate transactions secured by a consumer's principal dwelling where the loan term is one year or less, creditors disclose an example of the payment terms that would result from an interest rate increase. The Bureau proposed to revise comment 18(f)(1)(iv)-2 by removing paragraph 2.iii, which provides that such an example is not required in a multiple-advance construction loan disclosed pursuant to appendix D, part I. Appendix D, part I provides guidance for disclosing the construction phase of a construction-to-permanent loan as a separate transaction pursuant to § 1026.17(c)(6)(ii) (or for disclosing a construction-only loan). The Bureau's proposal to remove comment 18(f)(1)(iv)-2.iii was intended solely as a conforming amendment, to reflect the Bureau's belief that multiple-advance construction loans would no longer be subject to the § 1026.18 disclosure requirements under the proposal. The proposal stated the Bureau's belief that multiple-advance construction loans are limited to transactions with real property as collateral, and are not used for dwellings that are personal property or in reverse mortgages. The Bureau sought comment, however, on whether any reason remained to preserve comment 18(f)(1)(iv)-2.iii.

One State manufactured housing trade association commenter noted that, in the manufactured housing industry, a home may be sold as personal property and may become real property at some later point in time in the home delivery and installation process. That comment suggested that there may be construction elements to some manufactured home loans, although the commenter did not provide examples of such transactions. That commenter requested an exclusion from the disclosure requirements of proposed §§ 1027.37 and 1026.38 for “land/home stage-funded manufactured home loans,” even those loans that when fully consummated will be secured in whole or in part by real property. In addition, two national industry trade association commenters noted that some loans are secured by both real property and personal property, such as investments or deposits held in a consumer’s account, and that it is not clear whether those loans would be subject to the integrated disclosures and, if they are, how the creditor would disclose the security interest in personal property.

The Bureau has considered the comments received on the proposal to remove comment 18(f)(1)(iv)-2.iii. With respect to the State manufactured housing trade association comment, because the commenter suggests that some manufactured home loans may have construction-only phases that may be secured by personal property and not real property, the Bureau has determined it is appropriate to retain comment 18(f)(1)(iv)-2.iii for flexibility. To the extent the loans described in the comment letter are secured by real property, however, such loans would be covered by § 1026.19(e) and (f), and therefore § 1026.18(f) would be inapplicable. For a discussion of the scope of § 1026.19(e) and (f), see the section-by-section analysis of § 1026.19, below. Similarly, with respect to the two industry trade association comments, the Bureau acknowledges that multiple advance construction loans may be secured by both real and personal property. In such a case, however, because the loans are secured by real property, at least in part, such transactions would be subject to the disclosure requirements of § 1026.19(e) and (f), and therefore § 1026.18(f) would be inapplicable. Accordingly, the Bureau is not finalizing the proposed changes to comment 18(f)(1)(iv)-2.

18(g) Payment Schedule

Section 1026.18(g) requires the disclosure of the number, amounts, and timing of payments scheduled to repay the obligation, for closed-end transactions other than transactions subject to § 1026.18(s). Section 1026.18(s) requires an interest rate and payment summary table, in place of the § 1026.18(g) payment schedule, for closed-end transactions secured by real property or a dwelling, other than transactions that are secured by a consumer's interest in a timeshare plan. As noted above, however, the Bureau proposed to remove from the coverage of § 1026.18 transactions secured by real property, other than reverse mortgages, and subject them to the integrated disclosure requirement under §§ 1026.37 and 1026.38. Thus, under the proposal, § 1026.18(g) would have applied only to closed-end transactions that are unsecured or secured by personal property that is not a dwelling. All closed-end transactions that are secured by either real property or a dwelling, including reverse mortgages, would have been subject instead to either the interest rate and payment summary table disclosure requirement under § 1026.18(s) or the projected payments table disclosure requirement under §§ 1026.37(c) and 1026.38(c), as applicable.

In light of these proposed changes to the coverage of § 1026.18 generally, and specifically § 1026.18(g), the Bureau proposed several conforming changes to the commentary under § 1026.18(g). Specifically, comment 18(g)-4 would have been revised to remove a reference to home repairs, and comment 18(g)-5, relating to mortgage insurance, would have been removed and reserved. In addition, comment 18(g)-6, which currently discusses the coverage of mortgage transactions as between § 1026.18(g) and (s), would have been revised to reflect the additional effect of proposed § 1026.19(e) and (f), which would have required the new integrated disclosures set forth in proposed §§ 1026.37 and 1026.38 for most transactions secured by real property. Finally, the Bureau also proposed to amend comments 18(g)(2)-1 and -2 to remove unnecessary, and potentially confusing, references to mortgages and mortgage insurance.

The Bureau did not receive comments on this aspect of the proposed rule. For the reasons discussed in the proposal, the Bureau is finalizing the commentary to § 1026.18(g) as proposed.

18(k) Prepayment

Section 1026.18(k) implements the provisions of TILA section 128(a)(11), which requires that the transaction-specific disclosures for closed-end consumer credit transactions disclose whether (1) a consumer is entitled to a rebate of any finance charge upon prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge, and (2) a "penalty" is imposed upon prepayment in full of such transactions if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance. 15 U.S.C. 1638(a)(11). Commentary to § 1026.18(k) provides further guidance regarding the disclosures and provides examples of prepayment penalties and the types of finance charges where a consumer may be entitled to a rebate. For further background on § 1026.18(k), see the section-by-section analysis of § 1026.37(b)(4), below.

The proposal would have defined “prepayment penalty” in proposed § 1026.37(b)(4) for transactions subject to § 1026.19(e) and (f) as a charge imposed for paying all or part of a loan’s principal before the date on which the principal is due, and would have provided examples of prepayment penalties and other relevant guidance in proposed commentary. As noted in the proposal, the Bureau’s proposed definition of “prepayment penalty” and commentary is based on its consideration of the existing statutory and regulatory definitions of “penalty” and “prepayment penalty” under TILA and Regulation Z; the Board’s proposed definitions of prepayment penalty in its 2009 Closed-End Proposal, 2010 Mortgage Proposal, and 2011 ATR Proposal; and the Bureau’s authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and, for residential mortgage loans, 1405(b). Further background on the Bureau’s definition of prepayment penalty and the basis of its legal authority for that definition is provided in the section-by-section analysis of § 1026.37(b)(4), below.

As discussed in the section-by-section analysis of § 1026.37(b)(4), the Bureau sought to coordinate the definition of “prepayment penalty” in proposed § 1026.37(b)(4) with the definitions in the Bureau’s other rulemakings under the Dodd-Frank Act concerning ability-to-repay requirements, high-cost mortgages under HOEPA, and mortgage servicing. The Bureau sought to coordinate the definition of “prepayment penalty” due to its belief that, to the extent consistent with consumer protection objectives, adopting a consistent definition of “prepayment penalty” across its various pending rulemakings affecting closed-end mortgages will facilitate compliance. As an additional part of adopting a consistent regulatory definition of “prepayment penalty,” the Bureau proposed certain conforming revisions to § 1026.18(k) and associated commentary.

As stated in the TILA-RESPA Proposal, the Bureau recognized that, with such conforming revisions to § 1026.18(k) and associated commentary, the revised definition of "prepayment penalty" would have applied to both closed-end mortgage and non-mortgage transactions. In particular, the proposed conforming revisions to § 1026.18(k) would have defined "prepayment penalty" with reference to a prepayment of "all or part of" the principal balance of a loan covered by the provision, while TILA section 128(a)(11) and current § 1026.18(k) and its associated commentary refer to prepayment "in full." The proposal recognized that this revision could lead to an expansion of the set of instances that trigger disclosure under § 1026.18 of a prepayment penalty for closed-end transactions. The proposal stated the Bureau's belief that consumers entering into closed-end mortgage and non-mortgage transactions alike would have benefited from the transparency associated with more frequent and consistent disclosure of prepayment penalties. Therefore, the Bureau proposed to use its authority under TILA section 105(a) to make conforming revisions to § 1026.18(k) because of its belief that those changes would have effectuated the purposes of TILA by promoting the informed use of credit. Similarly, the Bureau believed these revisions would have helped to ensure that the features of these mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand better the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The Bureau also believed the revisions would improve consumer awareness and understanding of residential mortgage loans, and would be in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau solicited comment on this approach to the definition of prepayment penalty.

To conform with the proposed definition of prepayment penalty in § 1026.37(b)(4), proposed § 1026.18(k)(1) would have deleted the phrase "a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full" and would have replaced it with the phrase "a statement indicating whether or not a charge may be imposed for paying all or part of a transaction's principal before the date on which the principal is due." Proposed § 1026.18(k)(2) would have added the phrase "or in part" at the end of the phrase "a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full."

Proposed revised comments 18(k)-1 through -3 would have inserted the word "prepayment" before the words "penalty" and "rebate" when used, to standardize the terminology across Regulation Z (*i.e.*, § 1026.32(d)(6) currently refers to "prepayment penalty," and proposed § 1026.37(b)(4) uses the same phrase). Proposed revised comment 18(k)(1)-1 would have replaced the existing commentary text with the language from proposed comments 37(b)(4)-2 and -3 and proposed comment 18(k)(2)-1.A would have been revised with language from proposed comment 37(b)(4)-2.

The Bureau did not receive comments on the proposed changes to § 1026.18(k). However, the Bureau is finalizing certain additional changes to § 1026.18(k) and its commentary in order to adopt a consistent definition of "prepayment penalty" across its various rulemakings affecting closed-end mortgage transactions, as the Bureau stated it sought to do in the proposal. The reasons for these additional changes are discussed in the section-by-section analysis of § 1026.37(b)(4). Specifically, comment 18(k)(1)-1.ii is revised to provide that the term "prepayment penalty" does not include a waived bona fide third-party charge imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation, for consistency with comment 37(b)(4)-2.ii. The comment also provides an illustrative example. In addition, the Bureau is finalizing certain clarifying changes to comment 18(k)(1)-2.i, for consistency with comment 37(b)(4)-3.i. All other proposed amendments to § 1026.18(k) and its commentary are finalized as proposed, for the reasons stated in the proposed rule and in the section-by-section analysis of § 1026.37(b).

18(r) Required Deposit

If a creditor requires the consumer to maintain a deposit as a condition of the specific transaction, current § 1026.18(r) requires that the creditor disclose a statement that the APR does not reflect the effect of the required deposit. Comment 18(r)-6 provides examples of arrangements that are not considered required deposits and therefore do not trigger this disclosure. The Bureau proposed to remove and reserve paragraph 6.vi, which states that an escrow of condominium fees need not be treated as a required deposit. In light of the proposed changes to the coverage of § 1026.18, the only transactions to which this guidance would have applied are reverse mortgages, which do not entail escrow accounts for condominium fees or any other recurring expenses. Accordingly, the Bureau believed that comment 18(r)-6.vi would have been rendered unnecessary by the proposal. The Bureau requested comment, however, on whether any kind of transaction exists for which this guidance would continue to be relevant under § 1026.18, as amended by the proposal.

One small bank commenter noted that the Bureau proposed to exempt transactions subject to proposed § 1026.19(e) and (f) from the disclosures required by current § 1026.18(r), but that the integrated disclosures do not contain a similar disclosure requirement. As noted further in the section-by-section analyses of §§ 1026.37 and 1026.38, the integrated disclosures focus on the most readily understandable information that consumers use when shopping for and understanding their mortgage loans. The Bureau also stated in the TILA-RESPA proposal that it was concerned about the risk to consumers of experiencing information overload, which has often been cited as a problem with financial disclosures. The disclosure required by current § 1026.18(r), which is not specifically required by TILA, is not a disclosure that the Bureau's research and consumer testing indicates is important to consumers in understanding their loans. Accordingly, to reduce the potential for information overload for consumers, the Bureau is not requiring this disclosure in §§ 1026.37 or 1026.38. However, the final rule does not prohibit creditors from providing disclosures or information not specifically required by §§ 1026.37 or 1026.38. But, such additional information must be segregated from the required disclosures. *See* comment 37(o)(1)-1 and comment 38(t)(1)-1. For the reasons discussed in the proposal, the Bureau is finalizing comment 18(r)-6.vi as proposed.

18(s) Interest Rate and Payment Summary for Mortgage Transactions

Section 1026.18(s) currently requires the disclosure of an interest rate and payment summary table for transactions secured by real property or a dwelling, other than a transaction secured by a consumer's interest in a timeshare plan. Under the TILA-RESPA Proposal, however, § 1026.19(e) and (f) would have required new, separate disclosures for transactions secured by real property, other than reverse mortgages. Generally, the disclosure requirements of § 1026.19(e) and (f) would have applied to transactions currently subject to § 1026.18(s), except that reverse mortgages and transactions secured by dwellings that are personal property would have been excluded. In addition, as discussed in the section-by-section analysis of § 1026.19, transactions secured by a consumer's interest in a timeshare plan would have been covered by the integrated disclosure requirements of § 1026.19(e) and (f), although such transactions are not currently subject to the requirements of § 1026.18(s).

The new, integrated disclosures would have included a different form of payment schedule table, under §§ 1026.37(c) and 1026.38(c), instead of the interest rate and payment summary table under § 1026.18(s). Accordingly, the Bureau proposed to amend § 1026.18(s) to provide that it would have applied to transactions that are secured by real property or a dwelling, other than transactions that are subject to § 1026.19(e) and (f) (*i.e.*, reverse mortgages and dwellings that are not secured by real property). The Bureau proposed parallel revisions to comment 18(s)-1 to reflect this change in the scope of § 1026.18(s)'s coverage. The Bureau also proposed to add a new comment 18(s)-4 to explain that § 1026.18(s) would have governed only closed-end reverse mortgages and closed-end transactions secured by a dwelling that is personal property.

The Bureau did not receive comments on this aspect of the proposed rule. For the reasons discussed in the proposal, the Bureau is finalizing the revisions to § 1026.18(s) and comment 18(s)-1 and adding new comment 18(s)-4 as proposed.

While not specifically addressed in the proposal, one large provider of mortgage origination software commenter suggested the Bureau clarify that the interest rate and payment summary table represents a payment schedule that is a material disclosure for purposes of § 1026.23. Although the Bureau is not adopting such a clarification in the rule at this time, the Bureau notes that current Regulation Z defines "material disclosures" to include the "payment schedule" disclosure, which has historically been implemented under § 1026.18(g), but is currently also implemented in § 1026.18(s) for closed-end transactions secured by real property or a dwelling and, under this final rule, for a transaction that is subject to § 1026.19(e) and (f), in §§ 1026.37(c) and 1026.38(c). Section 1026.18(g) and (s) and §§ 1026.37(c) and 1026.38(c) each implement TILA section 128(a)(6), which requires the creditor to disclose the number, amount, and due dates or period of payments scheduled to repay the total of payments.

Accordingly, each of these disclosures is a "payment schedule" for purposes of § 1026.23.

18(s)(3) Payments for Amortizing Loans

18(s)(3)(i)(C)

Current § 1026.18(s)(3)(i)(C) requires creditors to disclose whether mortgage insurance is included in monthly escrow payments in the interest rate and payment summary. The proposal noted that the Bureau understands that some government loan programs impose annual guarantee fees and that creditors typically collect a monthly escrow for the payment of such amounts. Prior to issuing the proposal, the Bureau learned through industry inquiries that uncertainty exists regarding whether such guarantee fees should be disclosed as mortgage insurance under § 1026.18(s)(3)(i)(C) if the guarantee technically is not insurance under applicable law. As stated in the proposal, one way to comply with § 1026.18(s) is to include such guarantee fees in the monthly payment amount, without using the check box for "mortgage insurance." *See* comment 18(s)(3)(i)(C)-1 (escrowed amounts other than taxes and insurance may be included but need not be). Although the Bureau recognized that government loan program guarantees may be legally distinguishable from mortgage insurance, they are functionally very similar. Moreover, the Bureau believed that such a technical, legal distinction is unlikely to be meaningful to most consumers. Therefore, the Bureau believed that the disclosure of such fees would be improved by including them in the monthly escrow payment amount and using the check box for "mortgage insurance."

For these reasons, pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau proposed to revise § 1026.18(s)(3)(i)(C) to provide that mortgage insurance or any functional equivalent must be included in the estimate of the amount of taxes and insurance, payable with each periodic payment. Proposed comment 18(s)(3)(i)(C)-2 would have been revised to conform to § 1026.18(s)(3)(i)(C). Specifically, the proposed comment would have clarified that, for purposes of the interest rate and payment summary disclosure required by § 1026.18(s), "mortgage insurance or any functional equivalent" includes "mortgage guarantees" (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee) that provide coverage similar to mortgage insurance, even if not technically considered insurance under State or other applicable law. Since mortgage insurance and mortgage guarantee fees are functionally very similar, the Bureau believed that including both amounts in the estimate of taxes and insurance on the table required by § 1026.18(s) would have promoted the informed use of credit, thereby carrying out the purposes of TILA, consistent with TILA section 105(a). In addition, the proposed disclosure would have ensured that more of the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that will permit consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and would have improved consumer awareness and understanding of residential mortgage loans and would have been in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Proposed comment 18(s)(3)(i)(C)-2 would have been consistent with the treatment of mortgage guarantee fees on the projected payments table required by proposed §§ 1026.37(c) and 1026.38(c). *See* the section-by-section analyses of §§ 1026.37(c) and 1026.38(c) for a description of the treatment of mortgage guarantee fees in those sections.

One mortgage origination software provider commenter noted that the proposed revision to § 1026.18 to include the "functional equivalent" of mortgage insurance in the disclosure would benefit consumers and creditors. However, one GSE commenter stated that the proposed revision to include the “functional equivalent” of mortgage insurance in the disclosure would create uncertainty as to what information must be disclosed because the language in the proposed rule could unintentionally cover a variety of credit enhancement or other structures, such as lender-paid mortgage insurance, that are not incremental to the consumers monthly payment and are disclosed elsewhere. That commenter suggested that the Bureau remove the reference to “any functional equivalent” of mortgage insurance and limit inclusion of the cost of mortgage guarantees to only those associated with United States Department of Veterans Affairs or United States Department of Agriculture guarantees that result in an incremental cost to the consumer that is separate and apart from the consumer’s monthly payment of principal and interest. The Bureau otherwise did not receive comments on this aspect of the proposed rule.

For the reasons discussed in the proposal, the Bureau is finalizing the revisions to § 1026.18(s)(3)(i)(C) and comment 18(s)(3)(i)(C)-2 substantially as proposed, with certain clarifying changes to comment 18(s)(3)(i)(C)-2. As proposed, that comment would have provided that “mortgage insurance” means insurance against the nonpayment of, or default on, and individual mortgage. As finalized, however, the comment provides that “mortgage insurance or any functional equivalent” means the amounts identified in § 1026.4(b)(5). The Bureau believes that referencing the component of the finance charge in § 1026.4, rather than adopting a new definition, will facilitate compliance for creditors and avoid regulatory complexity, since the definition in § 1026.4(b)(5) is a longstanding part of Regulation Z. This change is consistent with the definition of “mortgage-related obligations” in the Bureau’s 2013 ATR Final Rule and with the references to mortgage insurance or any functional equivalent in § 1026.37(c), described below. The Bureau is also making clarifying changes to the references to mortgage insurance in comments 18(s)(3)(i)(C)-1 and 18(s)(6)-1, for consistency with the changes to comment 18(s)(3)(i)(C)-2.

The Bureau has considered the comment related to the disclosure of the "functional equivalent" of mortgage insurance, but does not believe the comment should be specifically addressed in the rule. Section 1026.18(s)(3)(i)(C) requires disclosure of mortgage insurance or any functional equivalent only if an escrow account will be established, and only requires disclosure of the amount that will be paid with each periodic payment. Because lender-paid mortgage insurance would not be paid with escrow account funds and would not be paid by the consumer with each periodic payment, § 1026.18(s)(i)(C) and its commentary would not apply.

18(t) "No-Guarantee-To-Refinance" Statement

Current § 1026.18(t)(1) provides that, for a closed-end transaction secured by real property or a dwelling, other than a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the creditor shall disclose a statement that there is no guarantee the consumer can refinance the transaction to lower the interest rate or periodic payments. The TILA-RESPA Proposal would have revised current § 1026.18(t) to provide that transactions subject to proposed § 1026.19(e) and (f) would not be subject to the requirements of § 1026.18(t)(1), and would have removed the exclusion for timeshare plans because transactions secured by a consumer's interest in a timeshare plan would have been subject to proposed § 1026.19(e) and (f).

The Bureau did not receive comments on this aspect of the proposed rule. Accordingly, and for the reasons discussed in the proposal, the Bureau is finalizing the revisions to § 1026.18(t) as proposed.

Section 1026.19 Certain Mortgage and Variable-Rate Transactions

The Bureau proposed to amend § 1026.19 to define the scope of the proposed integrated disclosures and to establish the requirements for provision of those disclosures.

Coverage of Integrated Disclosure Requirements

Background

The Bureau proposed to require delivery of the integrated disclosures for closed-end consumer credit transactions secured by real property, other than reverse mortgages. As discussed above in part IV, section 1032(f) of the Dodd-Frank Act requires that "the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under [TILA and sections 4 and 5 of RESPA], into a single, integrated disclosure for mortgage loan transactions covered by those laws." 12 U.S.C. 5532(f). In addition, sections 1098 and 1100A of the Dodd-Frank Act amended RESPA section 4(a) and TILA section 105(b), respectively, to require the Bureau to publish a "single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of [TILA and sections 4 and 5 of RESPA] that, taken together, may apply to a transaction that is subject to both or either provisions of law." 12 U.S.C. 2604(a); 15 U.S.C. 1604(b). Accordingly, the Bureau is directed to establish the integrated disclosure requirements for "mortgage loan transactions" that are "subject to both or either provisions of" RESPA sections 4 and 5 (the statutory RESPA GFE and RESPA settlement statement requirements) and TILA.[180]

The Legal Authority discussion in part IV above also notes that, notwithstanding this

[180] In addition to, and at the same time as, provision of the RESPA GFE under RESPA section 5(c), section 5(d) also requires lenders to provide to mortgage applicants the home buying information booklet prepared by the Bureau pursuant to section 5(a). Although the Bureau did not propose to integrate the booklet with the RESPA GFE and TILA disclosures, the Bureau proposed to implement the booklet requirement in proposed § 1026.19(g), discussed below. The same considerations of coverage discussed here with respect to the integrated disclosures also apply for purposes of the requirement to provide the special information booklet under § 1026.19(g).

integrated disclosure mandate, the Dodd-Frank Act did not reconcile important differences between RESPA and TILA, such as the delivery of the RESPA settlement statement and the final TILA disclosure, as well as the persons and transactions to which the disclosure requirements are imposed. Accordingly, to meet the integrated disclosure mandate, the Bureau believes that it must reconcile such statutory differences. The Bureau also recognizes that application of the integrated disclosure requirements of this final rule to certain transaction types may be inappropriate, even though those transaction types are within the scopes of one or both statutes. These issues and the Bureau's decisions for addressing them in the final rule are discussed below.

Differences in coverage of RESPA and TILA. RESPA applies generally to "federally related mortgage loans," which means loans (other than temporary financing such as construction loans) secured by a lien on residential real property designed principally for occupancy by one to four families and that are: (1) made by a lender with Federal deposit insurance; (2) made, insured, guaranteed, supplemented, or assisted in any way by any officer or agency of the Federal government; (3) intended to be sold to Fannie Mae, Ginnie Mae, or (directly or through an intervening purchaser) Freddie Mac; or (4) made by a "creditor," as defined under TILA, that makes or invests in real estate loans aggregating more than $1,000,000 per year, other than a State agency. 12 U.S.C. 2602(1), 2604.[181] RESPA section 7(a) provides that RESPA does not apply to credit for business, commercial, or agricultural purposes or to credit extended to government agencies. 12 U.S.C. 2606(a). Thus, RESPA disclosures

[181] Although section 4 of RESPA, 12 U.S.C. 2603, originally recited that it applied to federally related mortgage loans as well, as amended by the Dodd-Frank Act it no longer does so explicitly. The Bureau nevertheless regards the RESPA settlement statement requirement as continuing to apply to federally related mortgage loans, consistent with the rest of RESPA's scope generally.

essentially are required for consumer-purpose loans that have some Federal nexus (or are made by a TILA creditor with sufficient volume) and that are secured by real property improved by single-family housing.

Regulation X § 1024.5 implements these statutory provisions. Section 1024.5(a) provides that RESPA and Regulation X apply to federally related mortgage loans, which are defined by § 1024.2(b) to parallel the statutory definition described above. Regulation X § 1024.5(b) establishes certain exemptions from coverage, including loans on property of 25 acres or more; loans for a business, commercial, or agricultural purpose; temporary financing, such as construction loans, unless the loan is used to finance transfer of title or may be converted to permanent financing by the same lender; and loans on unimproved property, unless within two years from settlement the loan proceeds will be used to construct or place a residence on the land. 12 CFR 1024.5(b)(1) through (4). Unlike the others, the exemption for loans secured by properties of 25 acres or more is not statutory and is established by Regulation X only.

TILA, on the other hand, applies generally to consumer credit transactions of all kinds, including unsecured credit and credit secured by nonresidential property. 15 U.S.C. 1602(f) ("credit" defined as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment"). Similar to RESPA, TILA excludes, among others, extensions of credit primarily for business, commercial, or agricultural purposes, or to government or governmental agencies or instrumentalities, or to organizations. 15 U.S.C. 1603(1). In contrast with RESPA and Regulation X, however, TILA and Regulation Z have no exclusion for property of 25 acres or more, temporary financing, or vacant land. Moreover, TILA applies only to transactions made by a person who "regularly extends" consumer credit. *Id.* 1602(g) (definition of creditor).

Regulation Z §§ 1026.2(a)(14) and (17) and 1026.3(a) implement these statutory provisions. In particular, § 1026.2(a)(17) defines "creditor," in pertinent part, as a person who regularly extends consumer credit, and § 1026.2(a)(17)(v) further provides that, for transactions secured by a dwelling (other than "high-cost" loans subject to HOEPA), a person "regularly extends" consumer credit if it extended credit more than five times in the preceding calendar year. Section 1026.3(a) implements the exclusion of credit extended primarily for a business, commercial, or agricultural purpose, as well as credit extended to other than a natural person, including government agencies or instrumentalities.

Although TILA generally applies to consumer credit that is unsecured or secured by nonresidential property, Dodd-Frank Act section 1032(f), RESPA section 4(a), and TILA section 105(b) specifically limit the integrated disclosure requirement to "mortgage loan transactions." The Dodd-Frank Act did not specifically define "mortgage loan transaction," but did direct that the disclosures be designed to incorporate disclosure requirements that may apply to "a transaction that is subject to both or either provisions of the law."

As described above, five types of loans are currently covered by TILA or RESPA, but not both. Under the foregoing provisions, loans to finance home construction that do not finance transfer of title and for which the creditor will not extend permanent financing (construction-only loans), loans secured by unimproved land already owned by the consumer and on which a residence will not be constructed within two years (vacant-land loans), and loans secured by land of 25 acres or more (25-acre loans) all are subject to TILA but are currently exempt from RESPA coverage.[182] In addition, loans secured by dwellings that are not real property, such as

[182] The exemption for 25-acre loans is provided by Regulation X but does not appear in RESPA. *See* 12 CFR 1024.5(b)(1).

mobile homes, houseboats, recreational vehicles, and similar dwellings that are not deemed real property under State law, (chattel-dwelling loans) could be considered “mortgage loan transactions,” and they also are subject to TILA but not RESPA. On the other hand, federally related mortgage loans made by persons who are not creditors under TILA, because they make five or fewer such loans per year, are subject to RESPA but not TILA. In addition, some types of mortgage loan transactions are covered by both statutes, but may warrant uniquely tailored disclosures because they involve terms or features that are so different from standard closed-end transactions that use of the same form may cause significant consumer confusion and compliance burden for industry.

The Bureau proposed to use its authority under TILA section 105(a), (b), and (f), RESPA sections 4(a) and 19(a), and Dodd-Frank Act section 1032(a) and (f) and, for residential mortgage loans, 1405(b) to tailor the scope of the proposal so that the integrated disclosure requirements apply to all closed-end consumer credit transactions secured by real property, other than reverse mortgages. Thus, the proposal would have exempted reverse mortgages, open-end transactions, and transactions that are not secured by real property. The proposal also would have expanded the application of the integrated disclosure requirements to transactions secured by real property that do not contain a dwelling. As it explained in the proposal, the Bureau believed that doing so would ensure that, in most mortgage transactions, consumers receive integrated disclosure forms developed by the Bureau through extensive consumer testing that would improve consumers’ understanding of the transaction. Furthermore, the Bureau believed that applying a consistent set of disclosure requirements to most mortgage transactions would facilitate compliance by industry. Similarly, the proposal would have both narrowed and expanded the application of other Dodd-Frank Act mortgage disclosure requirements to improve consumer understanding and facilitate compliance.[183]

25-Acre Loans, Vacant Land Loans, and Construction-Only Loans

The Bureau proposed to apply the integrated disclosure requirements to 25-acre loans, construction-only loans, and vacant land loans. While these loans are currently exempt from mortgage disclosure requirements under RESPA and Regulation X, *see* 12 CFR 1024.5(b)(1), (3), and (4), the Bureau proposed to cover them to ensure that, in most mortgage transactions, consumers receive a consistent set of disclosures to improve consumer understanding and facilitate compliance. The Bureau explained that, if such transactions were not subjected to the integrated disclosure requirements, they would remain subject to the existing TILA disclosures under § 1026.18. The Bureau stated its belief that this treatment would deprive consumers in such transactions of the benefits of the disclosures developed for this proposal. Moreover, the Bureau explained that these types of transactions involve real property and, therefore, are amenable to disclosure of the information currently disclosed through the RESPA GFE and RESPA settlement statement requirements. Thus, the Bureau expected that creditors should be able to use existing systems to provide the integrated disclosures for such transactions. The Bureau solicited comment, however, on whether application of the integrated disclosures to these transactions would impose significant burdens on creditors.

Comments

[183] *See, e.g.*, Dodd-Frank Act section 1414(a) (requires negative amortization disclosure for open- or closed- end consumer credit plans secured by a dwelling or residential real property that includes a dwelling that provides or permits a payment plan that may result in negative amortization) (TILA section 129C(f)); Dodd-Frank Act section 1419 (requires certain payment disclosures for variable rate residential mortgage loans for which an escrow account will be established) (TILA section 128(a)(16)); Dodd-Frank Act sections 1461(a), 1462, and 1465 (requires certain payment and escrow disclosures for consumer credit transactions secured by a first lien on the principal dwelling of the consumer, other than an open-end credit plan or reverse mortgage) (TILA section 129D(h) and (j) and section 128(b)(4)); Dodd-Frank Act section 1475 (permits disclosure of appraisal management fees for federally related mortgage loans) (RESPA section 4(c)).

25-acre loans. Several commenters expressed support for covering 25-acre loans. A financial holding company indicated that covering these loans would facilitate compliance. A software company commenter and a title insurance company commenter stated that they did not believe covering these loans would be unduly burdensome on creditors, particularly if the Bureau provided guidance to address the unique characteristics of these loans. The software company commenter also explained that consumers who enter into multiple transactions at once would benefit from receiving consistent disclosures for different types of loans. A trade association representing banks from a midwestern State explained that many loans secured by properties of 25 acres or more are consumer-purpose loans for home construction, home improvement, refinance, or land acquisition. This commenter explained that these loans are typically structured the same as loans secured by properties on 24 or fewer acres and have similar costs, and that it is typically clear when they are being made for a consumer purpose, as opposed to a business purpose. Thus, the commenter explained that its membership generally did not object to providing the integrated disclosures for all consumer-purpose loans secured by real property, without regard to property size.

By contrast, trade associations representing banks, a compliance company, a rural lender, and several community banks explained that many loans on 25 acres or more have more than one purpose and that loans that have a business, commercial, or agricultural purpose should be exempt under Regulation Z. The rural lender also recommended that the Bureau deem in the final rule all loans secured by 25 acres or more to be business, commercial, or agricultural purpose loans. The rural lender commenter explained that its customers often take out consumer-purpose loans on properties of 25 acres or more, and that eliminating the current

RESPA exemption for such loans would place a significant burden on rural creditors.[184] The commenter noted that these loans were not subject to abusive mortgage practices in the past, and that the additional disclosures would impose a significant amount of paperwork and compliance burden, which would require it to increase staff. A rural lender commenter argued that covering loans on properties of 25 acres or more would not provide a significant consumer benefit and could hurt customers because additional disclosure requirements would delay closings, inhibit access to credit, and increase costs for customers. Other industry commenters recommended that, if a loan on 25 acres or more has a business, commercial, or agricultural purpose, then the loan's primary purpose should be deemed as such, which would exempt the loan from the rule's coverage, consistent with the current treatment of such loans under Regulation X.

Other creditor and bank trade association commenters were concerned that covering business, commercial, or agricultural loans would decrease lending in that market. A trade association commenter representing banks asserted that the Bureau lacked authority to regulate such transactions because RESPA applies only to consumer mortgage loans, TILA applies only to consumer credit, and Dodd-Frank Act section 1405(b) authorizes modified disclosures for "residential mortgage loans" only for the purpose of improving consumer awareness and understanding.

Vacant-land loans. A credit union commenter and an employee of a software company expressed support for covering vacant land loans because standardizing loan disclosure for loans secured by real estate would benefit consumers and financial institutions. A title insurance company stated that it did not believe there would be a significant new burden if these loans

[184] The rural lender indicated that approximately 55 percent of its consumer-purpose loan applications and 61 percent of closed-end consumer-purpose loans secured with real property are currently exempt from the RESPA GFE and RESPA settlement statement requirements, respectively.

were covered by the final rule. The software company commenter stated that it did not believe covering these loans would be unduly burdensome on creditors, particularly if the Bureau provided guidance to address the unique characteristics of these loans. This commenter also explained consumers who enter into multiple transactions at once would benefit from receiving consistent disclosures for different types of loans.

By contrast, a rural lender commenter, a compliance company, and a trade association representing credit unions requested that the Bureau exempt loans secured by vacant land. The rural lender commenter specifically requested that the Bureau consider exempting vacant land loans on which a home will not be constructed or placed using the loan proceeds within two years after settlement of the loan, which would be consistent with the exemption under current Regulation X § 1024.5(b)(4). The commenter explained that these loans, together with loans on properties of 25 acres or more and forms of temporary financing, comprise 55 percent of its consumer-purpose, real estate-secured loan applications and 61 percent of its closed-end consumer-purpose, real estate-secured loans that are currently exempt from RESPA GFE and RESPA settlement statement requirements, respectively. The commenter also observed that these loans were not subject to abusive mortgage practices in the past. Other commenters, including community banks, argued that covering vacant land loans would not provide a significant consumer benefit and could hurt consumers because additional disclosure requirements would delay and complicate closings, inhibit access to credit, and increase costs for consumers. The trade association representing credit unions argued that many aspects of the proposal would be incongruous for vacant land loans.

Construction-only loans. A credit union commenter and an employee of a software company expressed support for covering temporary loans because standardizing loan disclosure for loans secured by real estate would benefit consumers and financial institutions. A title insurance company stated that it did not believe there would be significant new burden if these loans were covered by the final rule. The software company commenter stated that it did not believe covering these loans would be unduly burdensome on creditors, particularly if the Bureau provided guidance to address the unique characteristics of these loans. This commenter also explained consumers who enter into multiple transactions at the same time would benefit from receiving consistent disclosures for different types of loans.

By contrast, a compliance company, a law firm submitting comments on behalf of a software company, a credit union, and trade associations representing banks and credit unions argued that temporary financing, particularly construction-only loans and bridge loans, also should be exempt because their unique characteristics make them ill-suited for RESPA disclosures. The trade association representing credit unions indicated that imposing the proposed timing requirements on construction-only loans would be unreasonable because the timing of their consummation is often affected by unforeseeable events, such as weather or material shortages, which would make it difficult to disclose the actual terms of their transactions in advance. The trade association commenter representing banks identified several characteristics of temporary or bridge loans it believed distinguished them from other transaction types: instead of monthly principal and interest payments, such loans typically require interest only payments or irregular quarterly payments with the principal balance due at maturity; no escrow account is established; no mortgage insurance is obtained; prepayment penalties are rare; and, typically closing costs are minimal because most costs are tied to the permanent financing. The commenter expressed concern that these unique features would mean bank software systems would not accurately populate the integrated disclosures and that associated compliance risk would reduce the availability of such products. The community bank commenter also argued that covering construction loans would reduce lending volume, complicate and delay closings, and would not necessarily benefit consumers. This commenter also observed that providing integrated disclosures for temporary and bridge loans would provide little benefit because they typically are made in conjunction with longer-term loans or until permanent financing is secure, and thus usually have lower costs than other loans. The compliance company commenter stated that construction-only loans are not consumer-purpose loans and consumers would receive no benefit from disclosures for such loans. The law firm commenter stated the Bureau was inconsistent by not exempting construction loans, which the company believed were distinct from traditional mortgage loans. This commenter identified several specific characteristics of construction loans that raised questions about the application of the proposal's integrated disclosure requirements, such as disclosure of loan term, adjustable payments, and adjustable interest rates.

A rural lender commenter requested that the Bureau exempt loans for temporary financing unless the loan is used to finance transfer of title or may be converted to permanent financing by the same creditor. The commenter explained that these loans, together with loans on properties of 25 acres or more and vacant land loans, comprise 55 percent of its consumer-purpose, real estate-secured loan applications and 61 percent of its closed-end consumer-purpose, real estate-secured loans that are currently exempt from RESPA GFE and RESPA settlement statement requirements, respectively. The commenter also argued that covering temporary financing would not provide a significant consumer benefit and could harm consumers because additional disclosure requirements would delay closings, restrict access to credit, increase costs for consumers, and impede consumers' ability to purchase new homes. The commenter also noted that these loans were not subject to abusive mortgage practices in the past.

Final Rule

The Bureau has considered the comments received regarding the applicability of the integrated disclosures to 25-acre loans, vacant-land loans, and construction-only loans.

25-acre loans. The Bureau declines to deem loans on properties of 25 acres or more that have a business, commercial, or agricultural purpose as non-consumer-purpose loans, notwithstanding any consumer purpose they may have.[185] TILA and Regulation Z already contemplate transactions that may have multiple purposes, and coverage depends on the primary purpose of the loan. TILA section 103(i) defines a "consumer" credit transaction as one in which the money, property, or services which are the subject of the transaction are "primarily" for personal, family, or household purposes. The definition of "consumer credit" in Regulation Z § 1026.2(a)(12) is consistent with this statutory definition. In addition, currently under Regulation Z, as in the final rule, an extension of credit primarily for business, commercial, or agricultural purpose is already exempt from the requirements of Regulation Z. *See* § 1026.3(a)(1). Current comment 3(a)-1 explains that a creditor must determine in each case if the transaction is primarily for an exempt purpose, and other existing commentary to 1026.3(a) provides guidance on whether particular types of credit, including credit for an agricultural purpose, are covered by Regulation Z. Further, loans on 25 acres or more that qualify as closed-end "consumer credit" under Regulation Z are currently subject to disclosure requirements under subpart C of Regulation Z, including those in § 1026.18. Accordingly, creditors should be familiar with determining whether a loan on such properties is exempt.

[185] The final rule also removes the 25-acre loan exemption from Regulation X. *See* the section-by-section analysis of § 1026.5(b)(1) above.

Although the Bureau received some comments suggesting that properties of 25 acres or more frequently have a non-consumer purpose, the Bureau received other comments, including one from a trade association representing banks located in a midwestern State, that loans on properties of 25 acres or more can be made for consumer purposes, such as home construction, home improvement, refinance, or land acquisition. Thus, even though a large-property loan may have a business, commercial, or agricultural purpose, the Bureau does not believe that fact alone should be sufficient to determine that the loan is not made primarily for a consumer purpose. Further, such an interpretation could have implications beyond this final rule to other parts of Regulation Z and remove existing TILA protections for consumers in rural areas.

The Bureau recognizes that making such loans subject to the integrated disclosure requirements will impose a new burden on industry. However, the Bureau believes covering such loans under the final rule is consistent with the Dodd-Frank Act integration mandate applicable to mortgage loan transactions. Additionally, exempting such loans altogether could deprive these consumers of an important benefit. Further, basing coverage on whether real estate secures the transaction will facilitate compliance because creditors will not have to identify the size of the property before or upon receipt of an application to determine whether a Loan Estimate must be provided.

Vacant-land loans. While vacant-land loans may not pose the same type of risk as dwelling-secured loans in the short term, they could present such risks if a consumer decides to construct a dwelling in the future. In addition, vacant land is itself an important source of value for consumers.

The Bureau believes the integration mandate applies to more than just dwelling-secured loans. Dodd-Frank Act sections 1032(f), 1098, and 1100A, which amend RESPA section 4(a) and TILA section 105(b), limit the integrated disclosure requirement to “mortgage loan transactions.” However, the Dodd-Frank Act did not specifically define that term. The Bureau believes the term extends broadly to real estate-secured transactions as the Dodd-Frank Act did not use the term “residential mortgage loan,” which was defined in Dodd-Frank Act section 1401. Moreover, the Dodd-Frank Act directs the Bureau to develop integrated disclosure requirements that may apply to a transaction that is subject to both or either provisions of TILA and RESPA. Although RESPA and Regulation X exempt vacant land loans from coverage, TILA and Regulation Z apply to such loans.

Accordingly, the Bureau believes these loans are covered by the integration mandate, and the Bureau believes that the integrated disclosures would be just as useful to a consumer whose closed-end credit transaction is secured by vacant real estate as they would to a consumer whose transaction is secured by real estate with a dwelling. In addition, the Bureau believes covering all real estate-secured closed-end consumer credit transactions (other than reverse mortgages) will facilitate industry compliance. Under the final rule, creditors will not have to determine whether the property includes a dwelling or if the loan proceeds will be used to construct a dwelling within two years from the date of the settlement of the loan[186] before or upon receipt of an application to determine whether a Loan Estimate must be provided.

Construction-only loans. The Bureau believes covering temporary loans secured by real estate will benefit consumers and will facilitate compliance because covering real estate-secured, closed-end consumer credit transactions, other than reverse mortgages, provides a clear

[186] Regulation X currently exempts from coverage any loan secured by vacant or unimproved property, unless, within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. 12 CFR 1024.5(b)(4). If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by Regulation X. *Id.*

compliance rule for industry. The Bureau notes that, while many construction-only loans may not be for a consumer purpose, only those loans made "primarily" for personal, family, or household purposes are covered by the final rule, consistent with the definition of "consumer credit" in Regulation Z § 1026.2(a)(12). Although the Bureau appreciates that the terms of a construction-only transaction may change based on unforeseen circumstances, these loans are not unique in that respect. Moreover, the Bureau has addressed the need for flexibility with respect to the provision of the Loan Estimate and Closing Disclosure under § 1026.19(e) and (f), such that unforeseen circumstances should not interfere with the provision of those disclosures. For example, the good faith estimate requirement applicable to the Loan Estimate is subject to changed circumstances set forth in § 1026.19(e)(3)(iv)(A). In addition, as discussed in the section-by-section analysis of § 1026.19(f)(2), the final rule revises the redisclosure triggers applicable to the Closing Disclosure to account for unforeseen circumstances that could make previously disclosed settlement costs inaccurate. The Bureau appreciates that temporary loans, such as construction-only loans, may have unique characteristics that require special guidance. In response to comments, the final rule provides additional clarity on how to disclose such construction-only loans, as described in the section-by-section analyses of the respective provisions of §§ 1026.37 and 1026.38.

Conclusion. The Bureau believes that including 25-acre loans, vacant-land loans, and construction-only loans within the scope of the integrated disclosure requirements effectuates the purposes of TILA under TILA section 105(a), because it would ensure meaningful disclosure of credit terms to consumers and facilitate compliance with the statute. In addition, consistent with section 1032(a) of the Dodd-Frank Act, coverage of these types of loans will ensure that the features of consumer credit transactions secured by real property 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. Further, the Bureau adopts these requirements for residential mortgage loans based on its authority under Dodd-Frank Act section 1405(b), as it believes the modification will improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and will be in the interest of consumers and in the public interest. Accordingly, for the aforementioned reasons, the final rule covers loans secured by properties of 25 acres or more, loans in which vacant land secures a closed-end consumer credit transaction, including loans on which a home will not be constructed or placed using the loan proceeds within two years after settlement of the loan, and construction-only loans and other forms of temporary financing secured by real property.

Reverse Mortgages, HELOCs, and Chattel-Dwelling Loans

As described in more detail below, the Bureau proposed to exempt from the integrated disclosure requirements certain loans that are currently covered by both TILA and RESPA (reverse mortgages and open-end transactions secured by real property or a dwelling), and certain loans that are covered by TILA but not RESPA (chattel-dwelling loans). The Bureau explained in the proposal that, for these mortgage transactions, the Bureau believes application of the integrated disclosure requirements would not improve consumer understanding or facilitate compliance and that these transactions should therefore be exempted from the integrated disclosure requirements.

Reverse mortgages. The Bureau proposed to exempt reverse mortgage loans, as defined under § 1026.33, from the integrated disclosure requirements. The Bureau explained in the proposal that it was aware that lenders and creditors face significant difficulties applying the disclosure requirements of RESPA and TILA to reverse mortgages, in light of those transactions' unusual terms and features. The difficulties appear to stem from the fact that a number of the disclosed items under existing Regulations X and Z are not relevant to such transactions and therefore have no meaning. Moreover, the Bureau explained in the proposal that it developed the proposed integrated disclosure forms for use in "forward" mortgage transactions and did not subject those forms, which implement essentially the same statutory disclosure requirements as do the current regulations, to any consumer testing using reverse mortgage transactions. The Bureau, therefore, was concerned that the use of the integrated disclosures for reverse mortgages may result in numerous disclosures of items that are not applicable, difficult to apply, or potentially even misleading or confusing for consumers.[187] The Bureau expected to address reverse mortgages through a separate, future rulemaking process that would establish a distinct disclosure scheme.[188]

HELOCs. Open-end transactions secured by real property or a dwelling (home-equity lines of credit, or HELOCs) are within the statutory scope of both TILA and RESPA and also reasonably could be considered "mortgage loan transactions." However, as the Bureau explained

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[187] In addition, many reverse mortgages are structured as open-end plans and therefore may be subject to the same concerns noted with respect to HELOCs.

[188] The Board's 2010 Mortgage Proposal included several provisions relating to reverse mortgages. *See* 75 FR 58539, 58638-59 (Sept. 24, 2010). Specifically, the Board proposed requiring creditors to use new forms of disclosures designed specifically for reverse mortgages, rather than the standard TILA disclosures. The 2010 Mortgage Proposal also proposed significant protections for reverse mortgage consumers, including with respect to advertising of reverse mortgages and cross-selling of reverse mortgages with other financial and insurance products. In addition, section 1076 of the Dodd-Frank Act required the Bureau to engage in a study of reverse mortgage transactions and instructs the Bureau to consider protections with respect to obtaining reverse mortgages for the purpose of funding investments, annuities, and other investment products and the suitability of a borrower in obtaining a reverse mortgage. The Bureau published the reverse mortgage study on June 28, 2012. *See* Press Release, U.S. Consumer Fin. Prot. Bureau, *CFPB Report Finds Confusion in Reverse Mortgage Market* (June 28, 2012), available at http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-report-finds-confusion-in-reverse-mortgage-market/. The Bureau intends that its future rulemaking for reverse mortgages will address the issues identified in the Board's 2010 Mortgage Proposal and the findings of the Bureau's reverse mortgage study.

in the proposal, HELOCs are, by their nature, fundamentally different from other forms of mortgage credit.

Chattel-dwelling loans. Chattel-dwelling loans (such as loans secured by mobile homes) do not involve real property, by definition. The Bureau estimated in the proposal that approximately one-half of the closing-cost content of the integrated disclosures is not applicable to such transactions because they more closely resemble motor vehicle transactions than true mortgage transactions. Such transactions currently are not subject to RESPA and, unlike the transactions above that involve real property, generally are not consummated with “real estate settlements,” which are the basis of RESPA’s coverage. Thus, the Bureau explained that, if these transactions were subject to the integrated disclosures under the proposal, a significant portion of the disclosures’ content would be inapplicable. The Bureau explained that permitting those items to be omitted altogether could compromise the overall integrity of the disclosures, which were developed through consumer testing that never contemplated such extensive omissions, and the Bureau therefore had no basis for expecting that they would necessarily be as informative or understandable to consumers if so dramatically altered. The Bureau expressed similar concerns about keeping the overall forms intact but directing creditors to complete the inapplicable portions with “N/A” or simply to leave them blank. Moreover, the Bureau explained that such an approach would risk undermining consumers’ understanding of their transactions, which would be inconsistent with the purpose of this rulemaking, because they could be distracted by extensive blank or “N/A” disclosures from the relevant disclosures present on the form.

Comments

Reverse mortgages. A credit union commenter supported an exemption for reverse mortgage loans because of their uniqueness and because the required disclosures would confuse consumers. A settlement agent commenter stated that if reverse mortgage loans are exempt from the final rule, they also should be exempt from RESPA section 4. The commenter recommended a simple closing statement that would itemize debits and credits to the borrower and seller. By contrast, another credit union commenter stated that reverse mortgage loans secured by real estate should be covered because standardizing loan disclosures for all real estate-secured loans would benefit consumers and financial institutions. The commenter recommended that additional disclosures required for reverse mortgages under § 1026.33(b) could be added as an addendum to the integrated disclosures, and that consumers would benefit from the use of standard forms that they could rely on and understand, while financial institutions would benefit from having a single set of rules and disclosures that would apply to similar loans.

HELOCs. A trade association representing credit unions and a credit union commenter supported an exemption for these loans due to their uniqueness and the fact that the required disclosures would not make much sense to the consumer for these types of transactions. A consumer advocacy group stated that HELOCs should have triggers and protections equal to those applicable to closed-end mortgage loans. The commenter explained that many consumers and creditors do not distinguish between open- and closed-end home-secured credit, and that the consequences of default on a HELOC are far more serious than for credit cards and more closely resemble the effects of default on a closed-end mortgage loan.

Chattel-dwelling loans. A non-depository lender for manufactured homes and a trade association representing the manufactured home industry supported the exclusion for chattel-dwelling loans from the integrated mortgage disclosure requirements. The non-depository lender commenter explained that some States have laws that impose requirements that have been interpreted to require mortgage lenders to fully comply with the disclosure requirements of RESPA and/or TILA or their implementing regulations for loans secured by both personal property and real estate. The commenter further explained that the practical effect of dual application of RESPA and TILA under State law is that lenders must provide both old and new forms of the RESPA and TILA disclosures for the same transaction. The commenter stated its position that any State law or regulation that requires a mortgage lender to provide not only the proposed integrated disclosures but also the existing or current versions of the RESPA and Regulation X required disclosures in connection with chattel-dwelling loans is inconsistent with RESPA and Regulation X. The commenter requested that the Bureau exercise its authority pursuant to Regulation X § 1024.13(b), both in connection with this rulemaking and in connection with current requirements regarding chattel-secured mortgage lending, to declare any such State law or regulation to be preempted by RESPA and Regulation X.

A national trade association commenter representing the recreational vehicle industry expressed concern about language in the proposal's preamble about the treatment of transactions not subject to the final rule but that could arguably fall within Dodd-Frank Act sections 1032(f), 1098, and 1100A. The Bureau explained in the proposal that such transactions will remain subject to the existing disclosure requirements under Regulations X and Z, as applicable, until the Bureau adopts integrated disclosures specifically tailored to their distinct features.[189] The commenter expressed concern that the Bureau intends to regulate recreational vehicle dealers through a future rulemaking by adopting integrated disclosures specifically tailored for such dealers. The commenter asked the Bureau to closely review the recreational vehicle market compared to the market for other chattel property, specifically manufactured homes. The

[189] *See* 77 FR 51116, 51156 (Aug. 23, 2012).

commenter noted that signaling recreational vehicle dealers will be regulated by tailored future mortgage transaction disclosures confuses the motor vehicle sales process and would keep lenders out of that market. This commenter and a trade association representing the recreational boat industry were concerned that the definition of "dwelling" in Regulation Z and related commentary would cover types of vessels and vehicles that are generally not included in the definition of dwelling under State laws, and that covering these types of personal property would reduce the availability of credit to individuals living in these structures.

A national trade association commenter representing credit unions and a credit union commenter supported the exemption for loans secured by personal property due to their uniqueness and the fact that the required disclosures would not make much sense to the consumer for these type transactions. A trade association commenter representing the manufactured home industry expressed concern that the proposal ignored that, in the manufactured housing industry, a home may be sold as personal property, and may only become real property at some later point in time in the home delivery and installation process. Commenters requested that the Bureau provide an exclusion from the new integrated disclosure requirements for land/home, staged funded manufactured home loans, even those loans that, when fully consummated, will be secured by real property. Several trade associations commenters representing banks requested that the Bureau clarify whether dual-collateral loans will be subject to the integrated disclosure requirements, and that if they are, that the Bureau consider developing related disclosures.

In contrast, a nonprofit advocacy organization and two consumer advocacy groups submitting a joint comment stated that the Bureau should extend RESPA coverage to all manufactured homes, including those titled as personal or real property. The consumer advocacy groups emphasized that manufactured homes resemble other residential structures and should receive the same protections under RESPA. They also stated that covering vacant land loans but not manufactured homes would be inconsistent and could result in consumer harm. The commenters explained that dwelling-secured credit poses higher risk to consumers than loans secured by vacant land. Consumer advocacy group commenters also requested that the Bureau provide all homeowners adequate disclosures, regardless of whether State law denominates the dwelling as real or personal property. The commenters also argued that this result was imperative because consumers living in manufactured housing are particularly susceptible to abusive lending. The commenters also requested that the Bureau clarify the treatment of manufactured homes under RESPA, in light of guidance provided by HUD that suggested a manufactured home is subject to RESPA depending on the nature of the dwelling's connection to the land. The commenters asked that the Bureau clarify that RESPA applies to all manufactured homes treated as real property under State law.

Final Rule

Reverse mortgages. As the Bureau explained in the proposal, reverse mortgages have unique features that are not amenable to the integrated disclosures, which were developed for forward mortgages. While requiring the integrated disclosures for reverse mortgages may provide a clearer coverage rule for creditors, applying the specific disclosure requirements to such loans would likely result in confusion for consumers and industry. As the Bureau noted in the proposal, the Bureau expects to address disclosures for reverse mortgages in a future rulemaking.

While the final rule exempts reverse mortgage loans from the integrated disclosure requirements of § 1026.19(e) and (f), it declines to exempt them completely from RESPA. As discussed in the section-by-section analysis of appendices A and C of Regulation X above, the Bureau is finalizing amendments to Regulation X to incorporate certain guidance in the HUD RESPA FAQs regarding the completion of the RESPA GFE and the RESPA settlement statement for reverse mortgage transactions. Although, as it noted in the proposal, the Bureau is aware that industry faces difficulties applying the disclosure requirements of RESPA and TILA to reverse mortgages, the Bureau does not believe it would be appropriate to grant an exemption from RESPA for such transactions because it would leave consumers without important RESPA-required disclosures. For the aforementioned reasons, the Bureau declines to include reverse mortgage loans subject to § 1026.33 within the scope of the integrated disclosure requirements of § 1026.19(e) and (f).

HELOCs. While the Bureau recognizes that open-end consumer credit transactions secured by real estate can pose risks to consumers, the Bureau continues to believe they would be inappropriate for coverage under the final rule. As the Bureau explained in the proposal, the integrated disclosures were developed for closed-end consumer credit, and the Bureau believes that using them to disclose open-end credit transactions would likely result in confusion because many parts of the disclosures would be inapplicable to open-end credit transactions, such as the projected payments table, the estimated taxes and insurance disclosure, or the escrow account disclosures under §§ 1026.37(c) and 1026.38(c).

The Bureau notes that HELOCs are open-end credit plans and therefore are subject to different disclosure requirements than closed-end credit transactions under Regulation Z. In recognition of the distinct nature of open-end credit, Regulation X effectively exempts such plans from the RESPA disclosure requirements. Sections 1024.6(a)(2) and 1024.7(h) of Regulation X state that, for HELOCs, the requirements to provide the "special information booklet" regarding settlement costs and the RESPA GFE, respectively, are satisfied by delivery of the open-end disclosures required by Regulation Z. Regulation X § 1024.8(a) exempts HELOCs from the RESPA settlement statement requirement altogether. The Bureau expects to address HELOCs through a separate, future rulemaking that will establish a distinct disclosure scheme tailored to their unique features, which will more effectively achieve the purposes of both RESPA and TILA.[190]

Chattel-dwelling loans. The Bureau has considered the comments on the final rule's coverage with respect to chattel-dwelling loans. The Bureau believes that disclosing loans secured by personal property using the integrated disclosures could reduce the intended consumer benefit of the disclosures because of those loans' unique characteristics. Excluding them from coverage of these integrated disclosures, however, would not excuse them from TILA's disclosure requirements. Rather, they would remain subject to the existing closed-end TILA disclosure requirements under § 1026.18. Thus, the current treatment of chattel-dwelling-secured loans under both RESPA and TILA is preserved if they are excluded from coverage of the integrated disclosure requirements in this final rule. Excluding chattel-dwelling-secured loans from the integrated disclosure requirements means they would not be subjected by this rulemaking to certain new disclosure requirements added to TILA section 128(a) by the Dodd-Frank Act. As discussed under the section-by-section analysis of § 1026.1(c) above, certain other new mortgage disclosure requirements, added to TILA under title XIV of the Dodd-Frank Act are exempted until integrated disclosure requirements are implemented by regulations for such transaction types. As noted above, the Bureau plans to address integrated disclosure

[190] In 2009, the Board proposed significant revisions to the disclosure requirements for HELOCs. *See* 74 FR 43428 (Aug. 26, 2009). The Bureau is now responsible for this proposal.

requirements for chattel-dwelling-secured loans, as well as reverse mortgages and HELOCs, in future rulemakings. The Bureau believes that the TILA disclosures resulting from that process would be more appropriate and more beneficial to consumers than the integrated disclosures under this final rule.

With respect to commenters concerned about future rulemakings applicable to recreational vehicles, the Bureau notes that TILA currently applies to credit transactions broadly. *See* 15 U.S.C. 1602(f). The Bureau also notes that closed-end consumer credit transactions not secured by real property, other than reverse mortgages subject to § 1026.33, are already subject to disclosure requirements in subpart C of Regulation Z, including those in § 1026.18. Any subsequent disclosure requirements on creditors subject to the Bureau's authority will be based on a review of the relevant market and the adequacy of existing disclosures, among other factors. With respect to commenters concerned that the definition of "dwelling" in Regulation Z potentially covers recreational vehicles and other vessels, the Bureau did not propose changes to the definition of "dwelling" under § 1026.2(a)(19) in the proposal and is not making such changes in this final rule.

Some commenters were concerned that coverage of multiple-advance construction loans may be secured by real property and personal property and, therefore, it may be unclear how a creditor would disclose such loans. However, the Bureau believes such loans are amenable to the integrated disclosures because such loans are secured by real property. The Bureau believes this treatment is warranted because the mandate to integrate disclosures under TILA and RESPA requires that the Bureau reconcile differences in coverage between the two statutes. The Bureau has addressed how to disclose such transactions in the rule, as described in the section-by-section analyses of § 1026.18 and appendix D to Regulation Z.

While the Bureau believes that most construction-only loans will be secured by real property at consummation, it recognizes that there may be circumstances in which such loans could be secured by personal property. Whether a transaction is secured by real property depends on State law, and the Bureau appreciates that, in some cases, a loan financing the construction phase of a dwelling may be classified as a loan secured by personal property at consummation of that phase of financing. Accordingly, the Bureau has retained existing regulatory provisions in Regulation Z that set forth disclosure requirements for construction loans applicable to closed-end consumer credit transactions not secured by real property.

With respect to commenters who requested that the Bureau extend RESPA coverage to transactions secured by personal property, the Bureau declines to do so because RESPA and Regulation X apply by their terms to "federally related mortgage loans," which are limited to transactions in which the lender has a lien secured by real property. The Bureau also declines to exercise authority under TILA and the Dodd-Frank Act to extend coverage of the final rule to manufactured homes that are considered chattel under State law. The Bureau believes basing coverage on the characteristic of whether the loan is secured by real property is warranted because a significant portion of the content of the disclosures was developed for real property transactions. The Bureau also believes that basing coverage on the characteristic of whether the loan is secured by real property is necessary to harmonize the coverage of RESPA and TILA and satisfy the integration mandate. Although manufactured homes may resemble other forms of residential property, the Bureau does not believe this characteristic alone should be sufficient to warrant coverage under § 1026.19(e) and (f). Other forms of chattel property besides manufactured homes also may serve as a residence, but more closely resemble motor vehicle transactions than real property transactions, and therefore many parts of the integrated disclosures would be inapplicable and would likely compromise consumer understanding of the disclosures. Finally, as the Bureau explained in the proposal, consumers who receive a loan secured by personal property would continue to be protected under the disclosures required elsewhere in Regulation Z, including those in § 1026.18. The Bureau declines to make a determination under § 1024.13(b), as requested by a commenter, regarding whether State laws conflict with the requirements of Regulation X. The commenter who requested this determination did not identify particular State laws that may conflict, and the Bureau therefore lacks a basis to make a conflict determination. See the section-by-section analysis of § 1026.28 for a discussion of the State law exemption rules applicable to the integrated disclosure requirements of this final rule.

Conclusion. For the reasons discussed above, the final rule does not apply to reverse mortgages, open-end credit transactions, or closed-end consumer transactions secured by personal property and not real property. Such loans will be subject to existing requirements in Regulation Z and reverse mortgages and open-end credit transactions will be subject to existing requirements in Regulation X. As discussed above, those transactions remain subject to the exemption in § 1026.1(c) from providing certain new disclosures under title XIV of the Dodd-Frank Act until the Bureau engages in future rulemakings for these transaction types.

Loans Extended by TILA "Creditors"

As noted above, RESPA applies generally to "federally related mortgage loans," which means loans (other than temporary financing such as construction loans) secured by a lien on residential real property designed principally for occupancy by one to four families, and that have a Federal nexus *or* are made by a TILA "creditor" that makes or invests in real estate loans aggregating more than $1,000,000 per year, other than a State agency. 12 U.S.C. 2602(1), 2604.

TILA generally covers consumer credit transactions of all kinds, including unsecured credit and credit secured by nonresidential property and applies only to transactions made by a person who "regularly extends" consumer credit. For transactions secured by a dwelling, other than HOEPA loans, Regulation Z defines a "creditor" as a person who extends credit more than five times in the preceding calendar year.[191]

Lenders that do not meet the TILA definition of "creditor" generally are subject to RESPA if they make a real property-secured loan with a Federal nexus. The Bureau proposed to exempt from the integrated disclosure requirements loans extended by these lenders who are covered by RESPA but not TILA. The Bureau explained that, if a lender extends five or fewer consumer credit transactions secured by a consumer's dwelling in a year, it should not be subject to TILA or Regulation Z. This treatment would have preserved the status of such transactions under existing Regulation Z. That is, currently, consumers do not receive Regulation Z disclosures from such lenders because they are not considered "creditors" pursuant to § 1026.2(a)(17)(v). The Bureau explained that eliminating this exemption could represent a significant expansion of TILA coverage and that it was unaware of any significant problems encountered by consumers obtaining credit from these types of creditors that might justify such an expansion. Further, because such creditors may lack the systems to comply with TILA, the Bureau anticipated they may cease to extend credit if forced to establish compliance systems. Although preserving this exemption means that the integrated disclosures would not be received by consumers in such transactions, the Bureau expected the impact of such an exemption to be limited. The Bureau noted in the proposal, based on data reported for 2010 under HMDA, that 569 creditors (seven percent of all HMDA reporters) reported five or fewer originations and,

[191] *See* 15 U.S.C. 1602(g); 12 CFR 1026.2(a)(17).

more significantly, that their combined originations of 1,399 loans equaled only 0.02 percent of all originations reported under HMDA for that year. The Bureau further explained that these transactions would remain subject to the RESPA disclosure requirements under Regulation X.

Comments

Commenters did not object to exempting these RESPA-covered lenders from the rule, but they did request that the Bureau further increase the threshold under Regulation Z for defining a TILA “creditor.” A trade association commenter representing settlement agents recommended that the threshold be increased to 25 annual transactions on mortgage loan transactions. A community bank commenter expressed support for a small creditor exemption with a threshold that exempts creditors that originate fewer than 2,500 loans in a calendar year. A law firm commenter recommended increasing the threshold to 100 mortgages a year.

A trade association representing credit unions argued that the proposed threshold of five or fewer mortgages a year was not an appropriate measure to provide regulatory relief for small entities. This commenter was concerned that the Bureau appeared to be defining “small entities” on a basis that appeared to be inconsistent with the Dodd-Frank Act, the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), and the Bureau’s past actions in conducting small-entity outreach under SBREFA, which identified small entities based on asset size, rather than lending volume. This commenter was concerned that a low exemption threshold would impose large costs on many credit unions not covered by the exemption and would force some credit unions to close their operations. The commenter recommended an exemption for credit unions that have $175 million or less in assets, which would be consistent with the size thresholds used for purposes of analysis under SBREFA. The commenter argued that the Dodd-Frank Act requires the agency to seriously consider the impact of its regulations on small entities. A commenter employed by a software company, however, stated that the rule should not modify the transaction threshold under § 1026.2(a)(17) because doing so would provide no consumer benefit, and that consistent application across creditors would facilitate shopping by the consumer. Several individual commenters and settlement agents expressed concern that it would be difficult to identify criteria for a small creditor definition. A law firm commenter also recommended that the Bureau include an exemption for small businesses.

Final Rule

The Bureau has considered the comments regarding the final rule's applicability to creditors subject to TILA and RESPA. The Bureau declines to grant an exemption for small creditors, such as one based on asset size, or otherwise make adjustments to the five-or-fewer mortgage threshold included in the definition of "creditor" under § 1026.2(a)(17), as discussed further in the section-by-section analysis of § 1026.2(a)(17). The Bureau does not believe exempting small creditors from the integrated disclosure requirements would be consistent with the integration mandate. The Bureau also believes such an exemption would hinder, rather than enhance, consumer understanding. Exempting a class of creditors from the final rule would result in an inconsistent set of disclosures that would negatively affect a consumer's ability to shop for the best loan. The integrated disclosures were designed to assist a consumer in comparing loans. The Bureau is concerned, for example, that a consumer who receives a Loan Estimate from a larger creditor for one loan would not be able to easily compare its terms to a loan disclosed in a different format from a small creditor exempt from this final rule that would otherwise meet the definition of "creditor" under Regulation Z. The Bureau is concerned that this result would be inconsistent with the aims of Dodd-Frank Act section 1032(a), which authorizes the Bureau to prescribe rules to ensure effective disclosure.

For the reasons discussed above in the section-by-section analysis of § 1026.2(a)(17), the Bureau has concluded that it will not adjust the "creditor" threshold in Regulation Z. Accordingly, for the aforementioned reasons, the Bureau is finalizing the scope of the integrated disclosure requirements with respect to creditors as proposed and pursuant to the authority cited in the proposal.

Other Coverage Issues

Some commenters requested that the Bureau clarify specific aspects of the proposal that relate to other sections of the rule. Trade association commenters representing banks requested clarification on how the rule would apply to trusts. One such trade association commenter observed that proposed comments 3(a)-9 and -10 specifically addressed trusts for tax or estate planning purposes. The commenter requested that the Bureau clarify how a trust's revocability would affect coverage. Another trade association commenter representing banks requested clarification regarding to whom the integrated disclosures and notice of the right of rescission must be provided in the case of certain inter vivos revocable trusts. Commenters also requested that Bureau address coverage with respect to certain housing assistance loan programs, which are currently exempted from Regulation X. *See* 12 CFR 1024.2(b). One trade association commenter representing banks recommended that creditors should be given the option of either providing the integrated disclosures or the § 1026.18 disclosures for housing assistance loan programs covered by the rule. The Bureau has addressed these comments in the section-by-section analysis of § 1026.3 above.

A trade association representing the timeshare industry commented regarding the Bureau's proposed expansion of the scope of certain disclosure requirements added to TILA by title XIV of the Dodd-Frank Act for "residential mortgage loans" (which, as noted above, is defined in section 1401 of the Dodd-Frank Act to exclude an extension of credit secured by a consumer’s interest in a timeshare plan) to apply to transactions secured by a consumer’s interest in a timeshare plan. Specifically, the Bureau proposed to include in the Closing Disclosure the disclosure requirements under Dodd-Frank Act sections 1402(a)(2) (requires disclosure of loan originator identifier), 1414(c) (requires disclosure of anti-deficiency protections), 1414(d) (requires disclosure of partial payment policy), and 1419 (requires disclosure of certain aggregate amounts and wholesale rate of funds, loan originator compensation, and total interest as a percentage of the principal amount of the loan), and require them to be included in the Closing Disclosure for transactions secured by a consumer’s interest in a timeshare plan. The trade association stated that the Bureau should provide in the final rule a timeshare-specific version of the Closing Disclosure that does not include these disclosures, or expressly permit timeshare lenders to strike out these provisions of the disclosure.

The final rule requires that these disclosures, as implemented by §§ 1026.37 and 1026.38, be provided for transactions secured by a consumer’s interest in a timeshare plan. The Bureau acknowledges that in this final rule it has determined to exclude from provision certain disclosures in the Closing Disclosure for other types of transactions, if such disclosure would provide inaccurate information with respect to that type of transaction. For example, for transactions not subject to 15 U.S.C. 1639h or 1691(e), as implemented in Regulation Z or Regulation B (12 CFR part 1002), respectively, the final rule does not require provision of the appraisal disclosure under § 1026.37(m)(1). In addition, the final rule provides alternative formats for certain parts of the Closing Disclosure to aid consumer understanding of particular aspects of such transactions (for example, the Bureau provides for alternative Costs at Closing and Calculating Cash to Close tables for transactions without a seller to aid consumer understanding of the unique aspects of such transactions, as described in the section-by-section analysis of § 1026.37(d) below).

However, the Bureau believes the disclosures for "residential mortgage loans" noted above would not be inaccurate for transactions secured by a consumer's interest in a timeshare plan, and would be just as useful to consumers in transactions secured by the consumer's interest in a timeshare plan as in transactions secured by real property. In addition, the Bureau believes that there is a benefit to consumers from receiving Closing Disclosures in a standardized format even in different types of transactions, because they may become more familiar with the format, which may aid consumer understanding of the disclosure. Further, the Bureau believes it will facilitate compliance for industry to reduce the amount of variability and dynamic aspects of the Closing Disclosure to instances that are technically necessary or that will aid consumer understanding, rather than numerous distinct versions for different types of transactions or security interests.

Accordingly, the Bureau, pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a), is applying these disclosure requirements under title XIV of the Dodd-Frank Act to extensions of credit secured by a consumer's interest in a timeshare plan. The Bureau believes that requiring these disclosures in such transactions furthers the purpose of TILA by promoting the informed use of credit. In addition, applying these disclosure requirements to transactions secured by a consumer's interest in a timeshare plan will ensure that the integrated disclosures will permit consumers of such transactions to understand the costs, benefits, and risks associated with the transaction, consistent with Dodd-Frank Act section 1032(a).

Conclusion—Coverage of the Final Rule

For the reasons discussed above, final § 1026.19(e) and (f), discussed further below, requires that the integrated disclosures be provided for closed-end consumer credit transactions secured by real property, other than a reverse mortgage subject to § 1026.33. Final § 1026.19(g) requires provision of the special information booklet for closed-end consumer credit transactions secured by real property and states in § 1026.19(g)(1)(iii)(C) that the requirement does not apply to reverse mortgages.

Accordingly, 25-acre loans, construction-only loans, and vacant-land loans are subject to the integrated disclosure and booklet requirements. Pursuant to final § 1026.19(g)(1)(iii)(C), reverse mortgage transactions are not subject to the integrated disclosure or booklet requirements. Pursuant to final § 1026.19(g)(1)(ii), HELOCs are not subject to the integrated disclosure requirements, but they are subject to the booklet requirements (though compliance is satisfied by providing an alternate brochure described in the final rule). Chattel-dwelling loans are not subject to the integrated disclosure or booklet requirements. Reverse mortgages, open-end transactions secured by real property or a dwelling, and chattel-dwelling loans will remain subject to the existing disclosure requirements under Regulations X and Z, as applicable, until the Bureau adopts integrated disclosures specifically tailored to their distinct features. Finally, federally related mortgage loans extended by a person that is not a creditor, as defined in Regulation Z § 1026.2(a)(17), are not subject to the integrated disclosure or booklet requirements for the reasons set forth above.

The Bureau believes adjusting the application of the provisions of TILA and RESPA is within its general mandate under Dodd-Frank Act sections 1032(f), 1098, and 1100A to prescribe integrated disclosures, which requires that the Bureau reconcile differences in coverage between the two statutes. The Bureau also believes that this approach is expressly authorized by sections 4(a) of RESPA and 105(b) of TILA because both provisions direct the Bureau to prescribe disclosures that “may apply to a transaction that is subject to both *or either* provisions of law.” (Emphasis added.) The Bureau believes those provisions authorize requiring the integrated disclosures for any transaction that is subject to either RESPA or TILA, and not only a transaction that is subject to both, precisely so that the Bureau has the flexibility necessary to reconcile those statutes’ coverage differences for purposes of the integrated disclosure mandate.

Furthermore, the Bureau believes that applying the integrated disclosures to closed-end consumer credit transactions secured by real property other than reverse mortgages will carry out the purposes of TILA and RESPA, consistent with TILA section 105(a) and RESPA section 19(a), by promoting the informed use of credit and more effective advance disclosure of settlement costs, respectively. In addition, the scope will ensure that the integrated disclosure requirements are applied only in circumstances where they will permit consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, consistent with Dodd-Frank Act section 1405(b).

Finally, the Bureau exempts from these integrated disclosure requirements transactions otherwise covered by TILA, pursuant to TILA section 105(f). The Bureau has considered the factors in TILA section 105(f) and has determined that an exemption is appropriate under that provision. Specifically, the Bureau believes that the exemption is appropriate for all affected borrowers, 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, 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 or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this final rule, the Bureau has determined that the exemptions are appropriate.

19(a) Reverse Mortgage Transactions Subject to RESPA

As discussed above, the final rule narrows the scope of § 1026.19(a) so that all loans currently subject to § 1026.19(a), other than reverse mortgages, are instead subject to § 1026.19(e) and (f), and makes conforming changes to comment 19(a)(1)(i)-1. The final rule also makes technical revisions to proposed § 1026.19(a)(1)(i) to require that the creditor "provide the consumer with" (instead of "make") the required good faith estimate disclosures, for greater consistency with other language in § 1026.19(e) and (f). The final rule also makes technical revisions to comment 19(a)(1)(i)-1. Specifically, the final comment refers to § 1026.19(a) instead of "this section." The final comment also further specifies the citation to the definition of "Federally related mortgage loan" in Regulation X. As proposed, the final rule makes conforming changes to § 1026.19(a)(1)(ii), deletes § 1026.19(a)(5), deletes comments 19(a)(5)(ii)-1 through -5, and deletes comments 19(a)(5)(iii)-1 and -2.

Pursuant to its authority under section 105(a) of TILA, the final rule adopts § 1026.19(a)(1)(i), substantially as proposed, to apply only to reverse mortgage transactions subject to both § 1026.33 and RESPA. Final § 1026.19(a), as amended, and its associated commentary are consistent with TILA's purpose in that it seeks to ensure meaningful disclosure of credit terms by requiring the integrated disclosures in this final rule only with respect to the loans for which they were designed: mortgage loans secured by real property other than reverse mortgages. The final rule and commentary also will be in the interest of consumers and the public because consumer understanding will be improved if consumers of reverse mortgages are not provided with inapplicable disclosures, consistent with Dodd-Frank Act section 1405(b).

Provision of the Loan Estimate and Closing Disclosure under Sections 19(e) and 19(f)

Provision of Current Disclosures Under TILA and RESPA

TILA. Section 128(b)(2)(A) of TILA provides that for an extension of credit secured by a consumer's dwelling, which also is subject to RESPA, good faith estimates of the disclosures in section 128(a) shall be made in accordance with regulations of the Bureau and shall be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application. 15 U.S.C. 1638(b)(2)(A). Section 128(b)(2)(A) also requires these disclosures to be delivered at least seven business days before consummation. Regulation Z implements this provision in § 1026.19(a), which generally tracks the statute except that it does not apply to home equity lines of credit subject to § 1026.40 and mortgage transactions secured by a consumer's interest in a timeshare plan subject to § 1026.19(a)(5).

Section 128(b)(2)(A) and (D) of TILA states that, if the disclosures provided pursuant to section 128(b)(2)(A) contain an annual percentage rate that is no longer accurate, the creditor shall furnish an additional, corrected statement to the borrower not later than three business days before the date of consummation of the transaction. 15 U.S.C. 1638(b)(2)(A), (D). Regulation Z implements TILA's requirement that the creditor deliver corrected disclosures in § 1026.19(a)(2)(ii).

RESPA. Section 5(c) of RESPA states that lenders shall provide, within three days of receiving the consumer's application, a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Bureau.[192] 12 U.S.C. 2604(c). Section 3(3) of RESPA defines "settlement services" as:

> [A]ny service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing or settlement.

12 U.S.C. 2602(3).

Section 1024.7(a)(1) of Regulation X currently provides that, not later than three business days after a lender receives an application, or information sufficient to complete an application, the lender must provide the applicant with the RESPA GFE. In contrast to the TILA and RESPA good faith estimate requirements, which apply to creditors, the RESPA settlement statement requirement generally applies to settlement agents. Specifically, section 4 of RESPA provides that the settlement statement must be completed and made available for inspection by the borrower at or before settlement by the person conducting the settlement. 12 U.S.C. 2603(b). Section 4 of RESPA also provides that, upon the request of the borrower, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person on the RESPA settlement statement during the business day immediately preceding the day of settlement. *Id.* These requirements are implemented in Regulation X § 1024.10(a).

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[192] RESPA section 5(d) provides that "[e]ach lender referred to in subsection (a) of this section shall provide the booklet described in such subsection to each person from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate. Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period." 12 U.S.C. 2604(d). RESPA section 5(c) provides that "[e]ach lender shall include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Bureau." 12 U.S.C. 2604(c). Thus, the lender must deliver the RESPA GFE not later than three business days after receiving the consumer's application.

The Dodd-Frank Act. Sections 1098 and 1100A of the Dodd-Frank Act amended RESPA and TILA to require an integrated disclosure that "may apply to a transaction that is subject to both or either provisions of law." Accordingly, as discussed below, the final rule integrates the TILA and RESPA good faith estimate requirements in final § 1026.19(e), as discussed below. The final rule also integrates the final TILA disclosure requirements and the RESPA settlement statement requirements in final § 1026.19(f), as discussed below. Finally, as appropriate, the final rule incorporates related statutory and regulatory requirements into § 1026.19 and makes conforming amendments.

19(e) Mortgage Loans Secured by Real Property—Early Disclosures

19(e)(1) Provision of Disclosures

19(e)(1)(i) Creditor

Proposed § 1026.19(e)(1)(i) would have provided that in a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall make good faith estimates of the disclosures listed in § 1026.37. Proposed comment 19(e)(1)(i)-1 would have explained that § 1026.19(e)(1)(i) requires early disclosure of credit terms in closed-end credit transactions that are secured by real property, other than reverse mortgages. It also would have explained that these disclosures must be provided in good faith, and that except as otherwise provided in § 1026.19(e), a disclosure is in good faith if it is consistent with the best information reasonably available to the creditor at the time the disclosure is provided.

Two national consumer advocacy group commenters asserted that the final rule should require the creditor to base disclosures on charges the creditor imposed on other consumers with similar loans, and to obtain pricing information from third-party vendors with which the creditor frequently works. The Bureau believes the tolerance rules in § 1026.19(e)(3) will incentivize creditors to perform the activities suggested by these commenters. Moreover, as a general matter, the Bureau believes that the general good faith requirement set forth in final § 1026.19(e)(1)(i) will strike the appropriate balance between consumer protection and reducing undue compliance burden. As final comment 19(e)(1)(i)-1 clarifies, except as otherwise provided in § 1026.19(e), a disclosure is in good faith if it is consistent with the standard set forth in § 1026.17(c)(2)(i). Section 1026.17(c)(2)(i) provides that disclosures may be estimated based on the best information reasonably available when exact information is not reasonably available to the creditor at the time the disclosures are made. The "reasonably available" standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. *See* comment 17(c)(2)(i)-1.

The Bureau is adopting § 1026.19(e)(1)(i) and comment 19(e)(1)(i)-1 with revisions to enhance clarity. Additionally, for reasons discussed in the section-by-section analysis of § 1026.19(e)(3)(i), the Bureau has determined, based on comments received in response to that section requesting clarification regarding the definition of the term "affiliate," to add new comment 19(e)-1 to explain that the term "affiliate" used in § 1026.19(e) has the same meaning as in § 1026.32(b)(5). The Bureau believes that because the term "affiliate" will be referenced in other provisions § 1026.19(e), the new comment should be located in § 1026.19(e) instead of § 1026.19(e)(3).

19(e)(1)(ii) Mortgage Broker

Currently, neither the disclosure requirements under TILA nor the disclosure requirements under RESPA expressly apply to mortgage brokers. The disclosure requirements of Regulation Z also do not apply to mortgage brokers. Section 1024.7(b) of Regulation X, however, currently permits mortgage brokers to deliver the RESPA GFE, provided that the mortgage broker otherwise complies with the relevant requirements of Regulation X, such as the RESPA GFE delivery requirements and tolerance rules, and that the creditor remains responsible for ensuring the mortgage broker's compliance. The Bureau proposed to carry this concept into the regulations governing the integrated disclosures in recognition of the fact that permitting mortgage brokers to deliver the integrated disclosures could benefit consumers in some cases. The Bureau stated in the proposal that some consumers may have better relationships with their mortgage brokers than with their creditors, and the mortgage brokers may be better able to assist those consumers with understanding the RESPA GFE more effectively and efficiently.

Accordingly, to preserve the flexibility in current Regulation X, the Bureau proposed § 1026.19(e)(1)(ii) to permit the mortgage broker to provide the Loan Estimate, subject to certain limitations, pursuant to the Bureau's authority under TILA section 105(a) and, with respect to residential mortgage loans, Dodd-Frank Act section 1405(b). Proposed § 1026.19(e)(1)(ii) would have provided that a mortgage broker may provide a consumer with the disclosures required under § 1026.19(e)(1)(i), provided that the mortgage broker acts as the creditor in every respect, including complying with all of the requirements of proposed § 1026.19(e) and assuming all related responsibilities and obligations.

The Bureau also proposed comments 19(e)(1)(ii)-1 through -4 to provide additional guidance regarding proposed § 1026.19(e)(1)(ii). Proposed comment 19(e)(1)(ii)-1 would have explained that a mortgage broker may provide the disclosures required under § 1026.19(e)(1)(i) instead of the creditor. The proposed comment would have further explained that by assuming this responsibility, the mortgage broker becomes responsible for complying with all of the relevant requirements as if it were the creditor, meaning that "mortgage broker" should be read in the place of "creditor" for all the relevant provisions of § 1026.19(e), except where the context indicates otherwise. Proposed comment 19(e)(1)(ii)-1 would have also stated that the creditor and mortgage broker must effectively communicate to ensure timely and accurate compliance with the requirements of § 1026.19(e).

Proposed comment 19(e)(1)(ii)-2 would have provided further guidance on the mortgage broker's responsibilities if a mortgage broker issues any disclosure under § 1026.19(e). The proposed comment provided an example clarifying that if the mortgage broker receives sufficient information to complete an application, the mortgage broker must issue the disclosures required under § 1026.19(e)(1)(i) within three business days in accordance with § 1026.19(e)(1)(iii). The proposed comment further provided that if the broker subsequently receives information sufficient to establish that a disclosure provided under § 1026.19(e)(1)(i) must be reissued under § 1026.19(e)(3)(iv), then the mortgage broker is responsible for ensuring that a revised disclosure is provided.

Proposed comment 19(e)(1)(ii)-3 would have discussed the creditor's responsibilities in the event that a mortgage broker provides disclosures under § 1026.19(e). The proposed comment provided an example clarifying that the creditor must ensure that the mortgage broker provides the disclosures required under § 1026.19(e) not later than three business days after the mortgage broker received information sufficient to constitute an application, as defined in § 1026.2(a)(3)(ii). It would have also stated that the creditor does not satisfy the requirements of § 1026.19(e) if it provides duplicative disclosures. The proposed comment further stated that a creditor does not meet its burden by issuing disclosures required under § 1026.19(e) that mirror disclosures already issued by the mortgage broker for the purpose of demonstrating that the consumer received timely disclosures. The comment further stated that if the mortgage broker provides an erroneous disclosure, the creditor is responsible and may not issue a revised disclosure correcting the error. The proposed comment clarified that the creditor is expected to maintain communication with the mortgage broker to ensure that the mortgage broker is acting in place of the creditor. This proposed comment would have been consistent with guidance provided by HUD in the HUD RESPA FAQs pp. 8-10, ## 16, 26, 29 (“GFE – General”). Proposed comment 19(e)(1)(ii)-3 would have also clarified that disclosures provided by a mortgage broker in accordance with § 1026.19(e)(1)(ii) satisfy the creditor’s obligation under § 1026.19(e)(1)(i).

Proposed comment 19(e)(1)(ii)-4 would have explained when mortgage brokers must comply with § 1026.19(e)(2)(ii), regarding the provision of preliminary written estimates specific to the consumer. The proposed comment would have provided the example that if a mortgage broker never provides disclosures required by § 1026.19(e), the mortgage broker need not include the disclosure required by § 1026.19(e)(2)(ii) on written information provided to consumers.

The Bureau recognized that there were potential concerns regarding the ability of mortgage brokers to provide the information required by the integrated Loan Estimate accurately and reliably and sought comment on those issues. For instance, the proposal noted that it is not clear that mortgage brokers have the ability to inform the consumer of certain required disclosures such as whether the creditor intends to service the consumer’s loan, or whether the creditor will permit a person to assume the consumer’s loan on the original terms. The proposal also sought comment on mortgage brokers’ ability to estimate taxes and insurance, which were proposed to be required on the Loan Estimate but are not included on the current RESPA GFE, to satisfy the good faith standard that would have been required for such disclosures under proposed § 1026.19(e)(3)(iii). The Bureau also recognized that mortgage brokers may not have the technology necessary to comply with the requirements under TILA regarding delivery of estimates, delivery of revised disclosures, and recordkeeping. The Bureau also solicited comment on the ability of creditors to coordinate their operations with mortgage brokers in a manner that provides the same or better information to consumers than if the creditor alone were permitted to provide the disclosures.

Comments

The Bureau received a number of comments expressing concern that creditors would not be able to send revised estimates to correct mistakes made by mortgage brokers. The commenters included two GSE commenters and several industry trade association commenters. Industry trade association commenters representing banks and mortgage lenders asserted that it would be inappropriate to require the creditor to ensure that the mortgage broker's disclosures comply with § 1026.19(e) and to be bound by the terms of the Loan Estimate the mortgage broker provides to the consumer unless the creditor has authorized the mortgage broker to issue the Loan Estimate. Additionally, these commenters expressed concern that the proposed rule would not have required the broker to promptly provide information to the creditor for purposes of issuing the original Loan Estimate and the revised Loan Estimate.

The commenters asserted that the final rule should: (1) require the mortgage broker to make arrangements with creditors so that either the mortgage broker or at least one of the creditors with which the mortgage broker works issues the Loan Estimate within three business days after the mortgage broker receives an application; or (2) require the mortgage broker to either issue the Loan Estimate within three business days after it receives the application or forward the application to the creditor, who would then have three business days from receipt of the application from the mortgage broker to issue the Loan Estimate. With respect to the revised Loan Estimate, the commenters asserted that if a mortgage broker receives information supporting the issuance of a revised Loan Estimate and provides it to the creditor, then the three-business-day redisclosure period proposed in § 1026.19(e)(4) should not begin until the creditor has received and evaluated the information.

A consumer commenter asserted that the Loan Estimate should always be provided by the creditor because permitting mortgage brokers to issue the Loan Estimate would add another party to the mortgage process and could cause consumer confusion. In contrast, a mortgage broker commenter asserted that the loan originator, not the creditor, should provide the Loan Estimate because the loan originator is the party working with the consumer to structure the terms of the mortgage loan. The commenter expressed concern that the consumer would be confused if a creditor were to send a separate Loan Estimate listing different costs for the same item that had been previously disclosed by a broker.

Final Rule

The Bureau has considered the comments and is modifying the final rule to reflect more closely the current requirements under Regulation X that permit mortgage brokers to provide the RESPA GFE. The Bureau believes these modifications will preserve the ability of consumers to work with mortgage brokers with whom they have a relationship and ensure that consumers will receive the Loan Estimate in a timely manner, thus mirroring current Regulation X, while providing clarity that will facilitate compliance and address commenters' concerns. In response to the concern that the proposed rule does not require mortgage brokers to issue a Loan Estimate after the mortgage broker receives a consumer's application for a mortgage loan for which a Loan Estimate must be provided within three days of receipt, § 1026.19(e)(1)(ii)(A) provides that if a mortgage broker receives a consumer's application, either the creditor or the mortgage broker shall provide a consumer with the Loan Estimate within three business days of receipt. This requirement is substantially similar to the requirement on mortgage brokers to provide the RESPA GFE in § 1024.7(b), and thus, the Bureau believes that it will facilitate compliance.

The Bureau. however, declines to adopt some industry commenters' suggestion that for creditors that receive consumer applications from mortgage brokers, the three-business-day period should not begin until such creditors receive consumer applications from mortgage brokers. The Bureau believes that making such a distinction would disadvantage consumers who work with mortgage brokers because compared to consumers who submit mortgage applications directly to creditors, consumers who submit mortgage applications to mortgage brokers would wait longer to receive a Loan Estimate. Additionally, the Bureau believes that treating creditors that receive applications directly from the consumer differently from creditors that receive consumer applications from mortgage brokers would disadvantage creditors that have direct relationships with consumers because they would have less time to provide the Loan Estimate.

Section 1026.19(e)(1)(ii)(A) also provides that if the mortgage broker provides the Loan Estimate, the mortgage broker shall comply with all relevant requirements of § 1026.19(e). This means that the mortgage broker shall comply with all applicable requirements of § 1026.19(e) as if it were the creditor. In this respect, § 1026.19(e)(1)(ii)(A) mirrors Regulation X. As noted above, § 1024.7(b) of Regulation X currently requires mortgage brokers who provide the RESPA GFE to comply with all the relevant provisions of Regulation X such as the RESPA GFE delivery requirements and the tolerance rules.

Further reflecting the current rule in Regulation X, § 1026.19(e)(1)(ii)(A) provides that the creditor shall ensure that the Loan Estimate is provided in accordance with all requirements of § 1026.19(e). Under current § 1024.7(b), the lender is responsible for ensuring that the RESPA GFE has been provided, and that obligation is not contingent on whether the creditor has authorized the mortgage broker to provide the RESPA GFE. Accordingly, the Bureau is not persuaded by the arguments of some commenters that it is inappropriate to require the creditor to ensure that a mortgage broker-provided Loan Estimate complies with § 1026.19(e) unless the creditor has authorized the mortgage broker to provide the Loan Estimate. Section 1026.19(e)(1)(ii)(A) further provides that disclosures provided by a mortgage broker in accordance with the requirements of § 1026.19(e) satisfy the creditor's obligation under § 1026.19(e). This aspect of § 1026.19(e)(1)(ii)(A) substantially reflects current § 1024.7(b), which provides that if the mortgage broker has provided a RESPA GFE, the lender is not required to provide an additional RESPA GFE.

Final § 1026.19(e)(1)(ii)(B) further provides that if a mortgage broker issues any disclosure under § 1026.19(e), the mortgage broker must also comply with the record retention requirements of § 1026.25(c) that apply to the Loan Estimate. This provision was set forth in proposed comment 19(e)(1)(ii)-3, but the Bureau is incorporating it in the text of final § 1026.19(e)(1)(ii) to facilitate compliance by providing greater clarity regarding a mortgage broker's responsibilities if it provides the Loan Estimate. Additionally, the record keeping requirement in § 1026.19(e)(1)(ii)(B) largely reflects the current rule in Regulation X, § 1024.7(f), which requires a mortgage broker to retain documentation of any reasons for providing a revised RESPA GFE for at least three years after settlement.

The Bureau does not believe that permitting mortgage brokers to provide the Loan Estimate will cause consumer confusion, as suggested by some commenters. As discussed above, Regulation X currently permits mortgage brokers to provide the RESPA GFE. The

Bureau is not aware of any evidence that the current practice has led to any consumer confusion. The Bureau also believes that generally preserving this aspect of current regulation promotes the informed use of credit, and is thus consistent with the statutory purposes of TILA. In addition, some of the comments suggest that the presence and use of mortgage brokers is an aspect of the origination process that consumers are generally familiar with. Further, because the Bureau has made a number of revisions to § 1026.19(e)(1)(ii) so that the final rule more closely resembles current Regulation X, the Bureau believes that creditors will continue to use mortgage brokers in the origination process.

The final rule does not permit the creditor to issue a separate Loan Estimate or revised disclosures to correct a mortgage broker's error. In this respect, the final rule reflects guidance provided by HUD in the HUD RESPA FAQs pp. 8-10, ##16, 26, 29 ("GFE – General"). Additionally, the final rule permits either the creditor or the mortgage broker to provide revised Loan Estimates based on any of the six legitimate reasons for revisions, described in greater detail below in the section-by-section analysis of § 1026.19(e)(3)(iv). The final rule also does not require mortgage brokers to get authorization from creditors before providing Loan Estimates. Further, creditors are bound by the terms of the Loan Estimate, subject to one of the six legitimate reasons for revisions such as changed circumstances or borrower-requested changes, whether or not the creditor has authorized the mortgage broker to provide the Loan Estimate. In these respects, the final rule reflects current Regulation X, because under current Regulation X, creditors are bound to the terms of the RESPA GFE provided to the consumer by the mortgage broker unless one of the six legitimate reasons for revisions apply (*e.g.*, borrower-requested change, a changed circumstance). Therefore, the Bureau is not persuaded that creditors should only be bound by the terms of a mortgage broker-provided Loan Estimate if the creditor has authorized the mortgage broker to provide the Loan Estimate. Lastly, the final rule does not impose explicit requirements on mortgage brokers with respect to providing application information to the creditor and to establishing additional conditions that mortgage brokers must satisfy before they issue a Loan Estimate. The Bureau believes that the creditor is in the best position to set these requirements contractually.

Finally, the final rule permits both creditors and mortgage brokers to provide the Loan Estimate. In this respect, the final rule is consistent with current Regulation X in that current Regulation X permits both lenders and mortgage brokers to provide the RESPA GFE. The Bureau is not persuaded by the assertion of a mortgage broker commenter that creditors should be prohibited from providing the Loan Estimate. In addition, TILA applies its disclosure requirements to creditors, as does Regulation Z. A rule that prohibited creditors from delivering the Loan Estimate would be incongruous with these longstanding disclosure requirements and statutory requirements.

The Bureau is adopting proposed comment 19(e)(1)(ii)-1 with modifications. The proposed comment would have explained the requirements of proposed § 1026.19(e)(1)(ii). Comment 19(e)(1)(ii)-1. explains the requirements of § 1026.19(e)(1)(ii), as applied to mortgage brokers, and reflects the changes the Bureau is making proposed § 1026.19(e)(1)(ii). Comment 19(e)(1)(ii)-1 also incorporates the relevant provisions of proposed comment 19(e)(1)(ii)-2, which would have explained the requirements of proposed § 1026.19(e)(1)(ii), as applied to mortgage brokers.

The Bureau is also adding to final comment 19(e)(1)(ii)-1 to clarify the meaning of “mortgage broker” for purposes of § 1026.19(e)(1)(ii). Comment 19(e)(1)(ii)-1 explains that the term “mortgage broker,” as used in § 1026.19(e)(1)(ii), has the same meaning as in

§ 1026.36(a)(2), and references comment 36(a)(1)-2. Section 1026.36(a)(2) provides that a mortgage broker is any loan originator that is not an employee of the creditor, and comment 36(a)(1)-2 explains that "mortgage broker" can include companies that engage in loan originator activities described in § 1026.36(a) and their employees. The Bureau believes clarifying the meaning of "mortgage broker" will facilitate compliance with the final rule. The definition of "mortgage broker," as used in § 1026.36(a)(2), is appropriate for § 1026.19(e)(1)(ii) because § 1026.36 applies to mortgage loan transactions that will be covered by § 1026.19(e) and because § 1026.36(a) provides a concise list of activities that are considered "loan originator" activities.

Proposed comment 19(e)(1)(ii)-3, which would have explained creditors' responsibilities under proposed § 1026.19(e)(1)(i), is adopted substantially as proposed as comment 19(e)(1)(ii)-2. The modifications reflect the changes to proposed § 1026.19(e)(1)(ii). The Bureau is not adopting proposed comment 19(e)(1)(ii)-4, which would have clarified the responsibility of mortgage brokers to help consumer distinguish between pre-application worksheets and the Loan Estimate. The proposed comment would have explained that mortgage brokers would only have to provide the disclaimer set forth in § 1026.19(e)(2)(ii) if the mortgage broker provides the Loan Estimate. But as discussed below, § 1026.19(e)(2)(ii) provides that any person that provides preliminary worksheets to consumers must provide the disclaimer. Accordingly, adopting the proposed comment would have been incongruous with § 1026.19(e)(2)(ii). The Bureau adopts § 1026.19(e)(1)(ii) and comments 19(e)(1)(ii)-1 and -2 pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

19(e)(1)(iii) Timing

The Bureau proposed to apply to the Loan Estimate the timing requirements in current Regulation Z that apply to the early TILA disclosure. 12 CFR 1026.19(a)(1)(i) and (a)(2)(i). These provisions implement TILA section 128(b)(2)(A). Section 128(b)(2)(A) of TILA provides that good faith estimates of the disclosures under section 128(a) shall be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application. 15 U.S.C. 1638(b)(2)(A). Section 128(b)(2)(A) also requires these disclosures to be delivered at least seven business days before consummation. RESPA requires lenders to provide the RESPA GFE not later than three business days after receiving the consumer's application, but does not mandate that the disclosures be provided in any particular number of days before consummation. This requirement is implemented in Regulation X, § 1024.7(a)(2).

The proposal would have applied both timing requirements under TILA to the integrated disclosures. Although RESPA does not contain a seven-business-day waiting period, the Bureau concluded that such a waiting period is consistent with the purposes of RESPA and that adopting it for the integrated disclosures would best effectuate the purposes of both TILA and RESPA by enabling the informed use of credit and ensuring effective advance disclosure of settlement charges. Accordingly, pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act, the Bureau proposed § 1026.19(e)(1)(iii).

Proposed § 1026.19(e)(1)(iii) would have required that the creditor deliver the disclosures required by § 1026.19(e)(1)(i) not later than the third business day after the creditor receives the consumer's application, as defined in proposed § 1026.2(a)(3)(ii), and that the creditor deliver these disclosures not later than the seventh business day before consummation of the transaction. The Bureau also proposed comments 19(e)(1)(iii)-1 through -3 to provide additional guidance regarding proposed § 1026.19(e)(1)(iii). Proposed comment 19(e)(1)(iii)-1 would have further clarified this provision and would have provided illustrative examples. Proposed comment 19(e)(1)(iii)-2 would have discussed the waiting period, clarifying that the seven-business-day waiting period begins when the creditor delivers the disclosures or places them in the mail, not when the consumer receives or is presumed to have received the disclosures, and would have provided an illustrative example.

Proposed comment 19(e)(1)(iii)-3 would have clarified issues related to denied or withdrawn applications, explaining that under § 1026.19(e)(1)(iii) the creditor could determine within the three-business-day period that the application will not or cannot be approved on the terms requested, such as when a consumer's credit score is lower than the minimum score required for the terms the consumer applied for, or the consumer applies for a type or amount of credit that the creditor does not offer. The proposed comment would have clarified that in that case, or if the consumer withdraws the application within the three-business-day period, the creditor would not need to make the disclosures required under § 1026.19(e)(1)(i). The proposed comment would have also clarified that if the creditor failed to provide early disclosures and the transaction is later consummated on the terms originally applied for, then the creditor would have violated § 1026.19(e)(1)(i). The proposed comment would have further clarified that if, however, the consumer amended the application because of the creditor's unwillingness to approve it on the terms originally applied for, no violation occurs for not providing disclosures based on those original terms. The proposed comment would have stated that the amended application would be a new application subject to § 1026.19(e)(1)(i).

Comments

The Bureau received comments from industry commenters and consumer advocacy groups. Two national consumer advocacy group commenters asserted that the Bureau should add a new requirement that applies the same timing requirement that applies to issuance of the Loan Estimate to issuance of notices concerning application denials. The commenters expressed concern that if the proposed timing requirements do not apply to denial notices, creditors can evade liability after failing to provide a Loan Estimate by simply claiming that they had denied the consumer's application and were excused from sending the Loan Estimate. The commenters also asserted that consumers will benefit from receiving a denial notification in the same timeframe in which the creditor is required to deliver the Loan Estimate because the requirement will ensure that consumers understand the reason that they have not received the Loan Estimate that they have requested while there is still a chance to correct errors on their credit report and apply elsewhere. The commenters further asserted that the disclosure for the denial should match requirements established by ECOA and FCRA.

In contrast, industry trade associations representing banks and mortgage lenders asserted that the Loan Estimate should only be required after the consumer indicates an intent to proceed with the application, preferably after 30 days of the consumer making such an indication. The commenters advocated for the suggestion as the best way to resolve the creditor's need for redisclosure without leading to excessive redisclosure. A large bank commenter asserted that the proposal is not clear with respect to whether the creditor is required to place the Loan Estimate in the mail within three business days of receiving a consumer's application or whether the creditor must ensure that the consumer receives the Loan Estimate no more than three business days after the creditor's receipt of the application. The commenter stated that it preferred the first interpretation.

Another large bank commenter sought clarification for purposes of § 1026.19(e)(1)(iii) with respect to treatment of applications involving multiple mortgage applicants and in particular which joint applicant the Bureau considers to be the person primarily liable under the mortgage loan for the purpose of delivering the Loan Estimate and how the creditor should determine who should receive the Loan Estimate in the case of multiple applicants with similar credit qualifying profiles. The large bank commenter also sought clarification on whether the creditor may provide a cover letter along with the Loan Estimate outlining the next steps in the application process. A community bank commenter requested that the Bureau conform the requirements of Regulation X to Regulation Z so that in the case of multiple applicants, the RESPA GFE would only have to be provided to one of the borrowers if the transaction involves more than one borrower.

An industry trade association representing developers of timeshares and similar fractional interest real estate products asserted that timeshare transactions should be exempted from the requirement in proposed § 1026.19(e)(1)(iii) that the Loan Estimate must be received by the consumer no later than seven business days before consummation because TILA exempts such transactions from the statutory seven-day waiting requirement, as does current Regulation Z, § 1026.19(a)(5), and because timeshare transactions are typically consummated on the same or very next day after the creditor receives the application. Further, because timeshare transactions are typically consummated on the same or very next day after the creditor receives the application, the commenter asserted that the Bureau should clarify that a timeshare creditor should be exempted from providing the Loan Estimate altogether if the transaction is consummated on the same day or the next day following the receipt of a consumer's application. The commenter asserted that absent such an exemption, consumers may be confused by receiving seemingly duplicative disclosures.

Final Rule

The Bureau has considered the comments, and continues to believe that it is appropriate to apply the statutory timing requirements under TILA to the integrated disclosures. While not expressly required by RESPA, the Bureau believes the seven-business-day requirement is consistent with RESPA's underlying purposes for the reasons stated in the proposal, described above. The Bureau therefore is adopting § 1026.19(e)(1)(iii) substantially as proposed.

The Bureau does not believe that creditors should only be required to provide the Loan Estimate after the consumer indicates an intent to proceed. Indeed, such an approach would be fundamentally inconsistent with the plain language of both statutes and with the basic purpose of early disclosures. The Loan Estimate contains, among other things, important information about the loan terms and a reliable estimate of settlement costs that is helpful to the consumer in deciding whether to proceed with the transaction and to evaluate and compare financing options. Accordingly, the Bureau believes that the Loan Estimate must be provided to the consumer before the consumer indicates an intent to proceed.

In response to comments, the Bureau has modified the final rule text and commentary so that it is clear that the timing requirement set forth in § 1026.19(e)(1)(iii) imposes on a creditor the obligation to deliver or place the Loan Estimate in the mail within three business days of receiving a consumer's application, instead of imposing on the creditor the obligation to ensure that the consumer receives the Loan Estimate within three business days from the creditor's receipt of the application. The Bureau notes that § 1026.19(e)(1)(iv) sets forth the rule regarding when a consumer is considered to have received the Loan Estimate if it is not provided to the consumer in person.

Additionally, comment 17(d)-2 in this final rule provides guidance with respect to the issue of determining to which consumer the creditor must provide the Loan Estimate in situations where there are two or more consumers. The comment explains that where two consumers are joint obligors with primary liability on an obligation, the Loan Estimate may be provided to any consumer with primary liability on the obligation. Comment 17(d)(2) also provides guidance on distinguishing a consumer who is primarily liable on an obligation from a consumer who is merely a surety or guarantor.

With respect to whether a creditor may provide a cover letter together with the Loan Estimate, the Bureau understands that this is a common practice, and this final rule permits the creditor to provide the Loan Estimate with other documents or disclosures, such as disclosures required by State or other applicable law in accordance with the requirements of § 1026.37(o). With respect to the argument that the Bureau should conform the requirements of Regulation X to Regulation Z so that in the case of multiple borrowers, the RESPA GFE would only have to be provided to one of the borrowers, the comment is addressed above in the section-by-section analysis of Regulation X, appendix C.

The Bureau notes that the comment advocating for requiring creditors to provide application denial notices within the same three business days that are required for the Loan Estimate is outside the scope of the proposal. The Bureau acknowledges that such a requirement may provide some benefit to some borrowers, but would also increase burden as to the timing of existing notification requirements under other regulations. Additionally, comment 19(e)(1)(iii)-3, which the Bureau is adopting without change, explains that if the creditor fails to provide the early disclosures and the transaction is later consummated on the terms originally applied for, then the creditor does not comply with § 1026.19(e)(1)(i). Accordingly, the Bureau does not believe that creditors can evade liability by claiming they denied the consumer’s application and were excused from sending the Loan Estimate if the creditor and the consumer later consummate the transaction on the terms for which the consumer applied originally.

The Bureau has considered the comments it received about the application of seven-business-day waiting period set forth in proposed § 1026.19(e)(1)(iii) to timeshare transactions. The Bureau has modified the proposed rule to add § 1026.19(e)(1)(iii)(C), which provides that a transaction secured by a consumer's interest in a "timeshare plan," as defined in 11 U.S.C. 101(53D) is not subject to the seven-business-day waiting period required by § 1026.19(e)(1)(iii)(B). The Bureau is persuaded that the unique nature of timeshare transactions would make it appropriate for the Bureau to retain the exemption in current § 1026.19(a)(5) that provides the seven-business-day waiting period does not apply to timeshare transactions.

The unique nature of timeshare transactions has also persuaded the Bureau that it would be appropriate to add new comment 19(f)(1)(ii)-4 to clarify that if a consumer provides the creditor with an application for a timeshare transaction, and consummation occurs within three business days after the creditor's receipt of the consumer's application, then the creditor complies with § 1026.19(e)(1)(iii) by providing the disclosures required under § 1026.19(f)(1)(i) instead of the disclosures required by § 1026.19(e)(1)(i). This interpretation essentially mirrors the current rule under § 1026.19(a)(5)(ii), which, with respect to a mortgage transaction subject to RESPA that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), requires the creditor to provide the early TILA disclosure within three business days after receipt of the consumer's application or before consummation, whichever is earlier. The Bureau believes that receiving a reliable estimate of the cost of the loan early is just as valuable to a consumer whose closed-end transaction is secured by a timeshare plan as a consumer whose closed-end transaction is secured by real property. However, given that timeshare transactions typically occur on the same day or the day after the creditor receives a consumer's application, the Bureau believes that it would be burdensome to creditors of such transactions to provide the Loan Estimate before consummation. But for timeshare transactions that will be consummated more than three business days after the receipt of an "application," the Bureau believes that the receipt of the Loan Estimate within three business days of the creditor's receipt of the consumer's application will help consumers avoid the uninformed use of credit, which is a purpose of TILA. The Bureau also believes that this will be consistent with section 19(a) of RESPA because it achieves the purposes of RESPA by requiring more effective advance disclosure to consumers of settlement costs.

Finally, for reasons discussed in greater detail above in the section-by-section analysis of § 1026.2(a)(6), the Bureau is adopting the application of the general definition of "business day" to the Loan Estimate delivery requirement in § 1026.19(e)(1)(iii). Accordingly, the Bureau is reorganizing § 1026.19(e)(1)(iii) to reflect that the general definition of "business day" applies to the Loan Estimate delivery requirement, but that the specific definition of "business day" applies to the seven-business-day waiting period. As adopted, § 1026.19(e)(1)(iii)(A) provides that the creditor shall deliver the disclosures required under § 1026.19(e)(1)(i) not later than the third business day after the creditor receives the consumer's application, as defined in § 1026.2(a)(3). Section 1026.19(e)(1)(iii)(B) provides that except as set forth in § 1026.19(e)(1)(iii)(C), the creditor shall deliver the disclosures required under § 1026.19(e)(1)(i) not later than the seventh business day before consummation of the transaction. Lastly, § 1026.19(e)(1)(iii)(C), added for reasons discussed above, provides that for a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), § 1026.19(e)(1)(iii)(B) does not apply. Comments 19(e)(1)(iii)-1 through -3 are adopted substantially as proposed. New comment

19(e)(1)(iii)-4 is adopted to explain that with respect to a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), where consummation occurs within three business days after a creditor's receipt of the consumer's application, a creditor complies with § 1026.19(e)(1)(iii) by providing the disclosures required under § 1026.19(f)(1)(i) instead of the disclosures required under § 1026.19(e)(1)(i). The Bureau adopts § 1026.19(e)(1)(iii) and its commentary pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

19(e)(1)(iv) Receipt of Early Disclosures

Section 128(b)(2)(E) of TILA, as amended by the MDIA, provides that if the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed. 15 U.S.C. 1638(b)(2)(E). RESPA provides that the RESPA GFE may be delivered either in person or by placing it in the mail. 12 U.S.C. 2604(c) and (d). Regulation Z provides that if the disclosures are provided to the consumer by means other than delivery in person, the consumer is considered to have received the disclosures three business days after they are mailed or delivered. *See* § 1026.19(a)(1)(ii). Regulation X contains a similar provision. *See* § 1024.7(a)(4).

To establish a consistent standard for the integrated Loan Estimate, pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act, the Bureau proposed § 1026.19(e)(1)(iv). Proposed § 1026.19(e)(1)(iv) would have provided that if the disclosures are provided to the consumer by means other than delivery in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer.

Proposed comment 19(e)(1)(iv)-1 would have explained that if any disclosures required under § 1026.19(e)(1)(i) are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered. The proposed comment would have stated that the presumption may be rebutted by providing evidence that the consumer received the disclosures earlier than three business days. The proposed comment would have also contained illustrative examples. Proposed comment 19(e)(1)(iv)-2 would have clarified that the presumption established in § 1026.19(e)(1)(iv) applies to methods of electronic delivery, such as email. The proposed comment would have also explained that creditors using electronic delivery methods, such as email, must also comply with the requirements of the E-Sign Act. The proposed comment would have also contained illustrative examples.

Comments

A number of industry commenters expressed concern that the proposal adjusted the regulatory language used in the current rule that addresses when a consumer is considered to have received the Loan Estimate if it was not delivered in person. As discussed above, current § 1026.19(a)(1)(ii), which is analogous to proposed § 1026.19(e)(1)(iv), provides that if disclosures are provided to the consumer by means other than in-person delivery, the consumer is considered to have received the disclosure three business days after they are mailed or delivered. The Bureau's proposal would have replaced "considered" with "presumed."

The commenters asserted that the replacement would weaken the strong presumption of receipt under the current rule, which some of the commenters described as a safe harbor. Industry trade associations representing banks and mortgage lenders expressed concern that the proposal would have created a rebuttable presumption of receipt, which would create compliance burden because the creditor would not know that the consumer has not received a mailed disclosure, or that receipt has been delayed, until the consumer has informed the creditor. They asserted that creditors may respond by imposing additional conditions, such as requiring consumers to send back a confirmation of receipt, ensured to allow them to rebut consumer claims. The commenters argued that if these procedures extend the waiting period before closing, then such delays could harm consumers. Industry trade association commenters representing banks and mortgage lenders also observed that the proposed use of "presumed" in the proposed regulatory text deviated from the statutory language in TILA section 128(b)(2)(E). A large bank commenter requested that the Bureau make clear that the presumption cannot be rebutted with evidence that the disclosures were received more than three days after they were mailed, but most commenters expressed a preference for reverting to the current terminology ("considered").

Some commenters expressed concern about the proposal's treatment of electronic delivery methods. The SBA expressed concern that the industry stakeholders it met with to discuss the proposal did not believe that the rule recognized the uniqueness of these methods because the proposal would apply the same presumption of delivery to disclosures that are mailed to the consumer and to disclosures that are emailed to the consumer. The SBA encouraged the Bureau to adopt a final rule that recognizes instantaneous delivery methods and provide clear guidance on what forms of proof sufficiently demonstrate delivery. A credit union commenter asserted that it should be presumed that disclosures transmitted electronically are received by the consumer on the same day to better reflect the reality of how such transmittals work and to reduce potential inefficiencies associated with treating electronic delivery methods the same as sending the disclosure by mail.

Another community bank commenter asserted that creditors should be able to rely on a consumer's request to receive the Loan Estimate electronically, and should not have to obtain prior consent that must meet the requirements of the E-Sign Act. The commenter asserted that electronic delivery is commonplace, and obtaining demonstrable consent can be difficult for creditors to achieve. If obtaining consent under the E-Sign Act were required, the commenter expressed concern that this would result in over-compliance: the creditor may send both a paper and an electronic copy of the Loan Estimate to the consumer. A different community bank commenter asserted that the Bureau must provide an objective definition of "receipt."

Final Rule

The Bureau has considered the comments and has decided to conform § 1026.19(e)(1)(iv) to the statutory language under MDIA in determining the date by which disclosures may be "considered" to have been received by the consumer. It appears that there would be implementation burden across the market associated with creditors trying to determine how to comply with a presumption of receipt standard rather than the standard that is in place currently. The Bureau also is persuaded that some of the compliance measures that creditors may adopt could cause unnecessary delays that harm consumers.

The Bureau is not persuaded by the argument that the Bureau should adjust the final rule to reflect that disclosures provided by electronic delivery should be subject to a different standard. The Bureau believes that it would require more information regarding the many different forms of delivery methods available to creditors, including technical information regarding different forms of electronic delivery, before it issues a rule applying different standards than the standard under TILA section 128(b)(2)(E) to the early TILA disclosure. The Bureau notes that this point is also discussed in the section-by-section analyses of

§ 1026.19(f)(1)(ii) and (iii). The Bureau additionally believes that applying a consistent standard to all Loan Estimates that are not provided to the consumer in person helps to improve consumer understanding of the mortgage origination process and facilitate compliance.

Finally, creditors are currently required to obtain consent that meets the requirements of the E-Sign Act with respect to the provision of the RESPA GFE and the early TILA disclosures in electronic form. *See* 12 CFR 1024.23; 12 CFR 1026.17(a)(1). Accordingly, requiring creditors to obtain consent that meets the requirements of the E-Sign Act prior to providing the Loan Estimate in electronic form does not impose new burdens on creditors.

The Bureau adopts § 1026.19(e)(1)(iv) pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act. As finalized, § 1026.19(e)(1)(iv) provides that if the disclosures are provided to the consumer by means other than delivery in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. As discussed above, the Bureau is modifying proposed § 1026.19(e)(1)(iv) to conform final § 1026.19(e)(1)(iv) to the statutory language under MDIA. The Bureau is also modifying proposed § 1026.19(e)(1)(iv) to harmonize the text of final § 1026.19(e)(1)(iv) with the text of final § 1026.19(f)(1)(iii). Further, as discussed above in the section-by-section analysis of § 1026.19(e)(1)(iii), § 1026.19(e)(1)(iv) sets forth when a consumer is considered to have received the Loan Estimate if it is not provided to the consumer in person. Accordingly, the Bureau is modifying the proposed heading to § 1026.19(e)(1)(iv) to clarify that § 1026.19(e)(1)(iv) addresses the receipt of the Loan Estimate.

The Bureau is modifying proposed comments 19(e)(iv)-1 and -2 to reflect the fact that the Bureau is finalizing the timing currently used under TILA and Regulation Z. Comment

19(e)(1)(iv)-1 explains that § 1026.19(e)(1)(iv) provides that, if any disclosures required under § 1026.19(e)(1)(i) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer. The comment further explains that the creditor may, alternatively, rely on evidence that the consumer received the disclosures earlier than three business days and illustrates this with an example. Comment 19(e)(1)(iv)-2 explains that the three-business-day period provided in § 1026.19(e)(1)(iv) applies to methods of electronic delivery, such as email, and illustrates the requirement with an example. The comment also explains that the creditor may, alternatively, rely on evidence that the consumer received the emailed disclosures earlier, and provides an illustrative example. The comment further explains that creditors using electronic delivery methods, such as email, must also comply with § 1026.37(o)(3)(iii) and illustrates this requirement with an example. As discussed in greater detail below in the section-by-section analysis of § 1026.37(o), § 1026.37(o)(3)(iii) requires a creditor to obtain the consumer's consent pursuant to the E-Sign Act if the creditor provides the disclosures required by § 1026.19(e)(1)(i) in electronic form.

19(e)(1)(v) Consumer's Waiver of Waiting Period Before Consummation

Section 128(b)(2)(F) of TILA provides that the consumer may waive or modify the timing requirements for disclosures to expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. Section 128(b)(2)(F) further provides that: (1) the term "bona fide personal financial emergency" may be further defined in regulations issued by the Bureau; (2) the consumer must provide the creditor with a dated, written statement describing the emergency and specifically waiving or modifying the timing requirements, which bears the signature of all consumers entitled to receive the disclosures; and (3) the creditor must provide, at or before the time of waiver or modification, the final disclosures. 15 U.S.C. 1638(b)(2)(F). This provision is implemented in § 1026.19(a)(3) of Regulation Z. Neither RESPA nor Regulation X contains a similar provision.

The Bureau proposed to incorporate the current rule set forth in § 1026.19(a)(3) in proposed § 1026.19(e)(1)(v), which would have provided that the consumer has the ability to waive the proposed seven-business-day waiting period in § 1026.19(e)(1)(iii)(B) for the Loan Estimate in the case of a "bona fide personal financial emergency." The Bureau stated in the proposal that, although the Bureau understood that waivers based on a bona fide personal financial emergency were rare, this exception served an important purpose: consumers should be able to waive the protection afforded by the waiting period if, in the face of a financial emergency, the waiting period does more harm than good. Accordingly, pursuant to its authority under TILA section 105(a) and RESPA section 19(a) the Bureau proposed § 1026.19(e)(1)(v). Proposed § 1026.19(e)(1)(v) would have reflected the current rule, because it would have allowed a consumer to waive the seven-business-day waiting period that was proposed in § 1026.19(e)(1)(iii) in the event of a bona fide personal financial emergency. In addition, the Bureau requested comment on the nature of waivers based on bona fide personal financial emergencies. The Bureau also requested comment on whether the bona fide personal financial emergency exception is needed more in some contexts than in others (*e.g.*, in refinance transactions or purchase money transactions).

Proposed comment 19(e)(1)(v)-1 would have explained that a consumer may modify or waive the right to the seven-business-day waiting period required by § 1026.19(e)(1)(iii) only after the creditor makes the disclosures required by § 1026.19(e)(1)(i). The proposed comment would have clarified that the consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period, and that whether these conditions are met would be determined by the individual facts and circumstances. The proposed comment would have explained that the imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency. The proposed comment would have also clarified that each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective. Proposed comment 19(e)(1)(v)-2 would have provided illustrative timing examples.

Comments

A number of industry commenters, including industry trade associations representing Federally-charted credit unions and credit unions generally, regional- and State-based credit union trade associations, a State bankers association, and a large bank, asserted that creditors are hesitant to use the current bona fide personal financial emergency exception because it has been interpreted too narrowly. Commenters recommended that the Bureau broaden the scope of the exception by expanding the list of examples illustrating the exception or allowing creditors to rely on what borrowers represent to the creditor to be a bona fide personal financial emergency.

Final Rule

The Bureau has considered the comments, but is finalizing § 1026.19(e)(1)(v) substantially as proposed, with a change to reflect the revisions made to § 1026.19(e)(1)(iii), which is referenced in § 1026.19(e)(1)(v). The Bureau believes that the current exemption is intentionally narrow and is not persuaded that it should be expanded. For most consumers, a mortgage loan will be the most significant financial obligation of their lives. Accordingly, the

Bureau believes that the consumer must be given a meaningful opportunity to shop for a mortgage loan, compare the different financing options available, and negotiate for favorable terms. The Bureau believes the seven-business-day waiting period established by TILA section 128(b)(2)(F) is the minimum amount of time in which a consumer could meaningfully shop, compare, and negotiate the terms of the mortgage loan, and should only be waived in the most stringent of circumstances. The Bureau is adopting § 1026.19(e)(1)(v) and comments 19(e)(1)(v)-1 and -2 substantially as proposed, pursuant to its authority under TILA section 105(a) and RESPA section 19(a).

19(e)(1)(vi) Shopping for Settlement Service Providers

Neither TILA nor RESPA nor Regulation Z requires creditors to inform consumers about settlement service providers for whom the consumer may shop. However, Regulation X provides that where a creditor or mortgage broker permits a borrower to shop for third party settlement services, the creditor or broker must inform borrowers of that fact and provide them with a written list of settlement service providers at the time the RESPA GFE is provided on a separate sheet of paper. 12 CFR 1024 app. C. This requirement was intended to enable consumers to shop for settlement service providers, thereby enhancing market competition and lowering settlement service costs for consumers. The Bureau proposed to adopt the same basic requirements for purposes of the integrated disclosures in § 1026.19(e)(1)(vi), agreeing with the conclusion that a written list of settlement service providers could benefit consumers by fostering settlement service shopping.

As an initial matter, proposed § 1026.19(e)(1)(vi)(A) would have provided that a creditor permits a consumer to shop for a settlement service if the creditor permits the consumer to select the provider of that service, subject to reasonable minimum requirements regarding the qualifications of the provider. Proposed comment 19(e)(1)(vi)-1 would have provided examples of minimum requirements that are reasonable or unreasonable. This proposed comment would have also clarified that the requirements to provide lists of settlement service providers under § 1026.19(e)(1)(vi)(B) and (C) do not apply if the creditor does not permit the consumer to shop.

Proposed § 1026.19(e)(1)(vi)(B) would have required that the creditor identify the services for which the consumer is permitted to shop in the Loan Estimate. Proposed comment 19(e)(1)(vi)-2 would have clarified that § 1026.37(f)(3) contains the content and format requirements for this disclosure. Proposed § 1026.19(e)(1)(vi)(C) would have provided that, if the creditor permits a consumer to shop for a settlement service, the creditor shall provide the consumer with a written list identifying available providers of that service and stating that the consumer may choose a different provider for that service. It would have also required that the list be provided separately from the Loan Estimate but in accordance with the timing requirements for that disclosure (*i.e.*, within three business days after application). Proposed comment 19(e)(1)(vi)-3 would have explained that the settlement service providers identified on the written list must correspond to the settlement services for which the consumer may shop, as disclosed on the Loan Estimate pursuant to § 1026.37(f)(3). It would have also referred to the model list provided in form H-27 of appendix H to Regulation Z.

Proposed comment 19(e)(1)(vi)-4 would have clarified that a creditor does not comply with the requirement in § 1026.19(e)(1)(vi)(C) to "identify" providers unless it provides sufficient information to allow the consumer to contact the provider, such as the name under which the provider does business and the provider's address and telephone number. It would have also clarified that a creditor does not comply with the availability requirement in § 1026.19(e)(1)(vi)(C) if it provides a written list consisting of only settlement service providers that are no longer in business or that do not provide services where the consumer or property is located. The proposed comment would have further clarified that if the creditor determines that there is only one available settlement service provider, the creditor would only need to identify that provider on the written list of providers. The Bureau stated that the guidance regarding availability would be consistent with guidance provided by HUD in the HUD RESPA FAQs p. 15, # 7 ("GFE - Written list of providers").

Proposed comment 19(e)(1)(vi)-5 would have referred to form H-27 of appendix H to Regulation Z for an example of a statement that the consumer may choose a provider that is not included on the written list. Proposed comment 19(e)(1)(vi)-6 would have clarified that the creditor may include a statement on the written list that the listing of a settlement service provider does not constitute an endorsement of that service provider. It would have further clarified that the creditor would also be permitted to identify on the written list providers of services for which the consumer is not permitted to shop, provided that the creditor expressly and clearly distinguishes those services from the services for which the consumer is permitted to shop, and that this could be accomplished by placing the services under different headings.

Finally, proposed comment 19(e)(1)(vi)-7 would have explained how proposed § 1026.19(e)(1)(vi) relates to the requirements of RESPA and Regulation X. The proposed comment would have explained that § 1026.19 does not prohibit creditors from including affiliates on the written list under § 1026.19(e)(1)(vi), but that a creditor that includes affiliates on the written list would also have to comply with § 1024.15 of Regulation X. The Bureau stated that this comment would be consistent with guidance provided by HUD in its RESPA FAQs p. 16, # 9 ("GFE - Written list of providers"). The proposed comment would have also explained that the written list is a "referral" under § 1024.14(f). The Bureau stated that this comment would be consistent with guidance provided by HUD in the HUD RESPA FAQs p. 14, # 4 ("GFE - Written list of providers").

The Bureau solicited comment regarding whether the final rule should provide more detailed requirements for the written list of providers. The Bureau also solicited comment regarding whether the final rule should include additional guidance regarding the content and format of the written list of providers.

Comments

A number of industry commenters provided comments on proposed § 1026.19(e)(1)(vi). Some of the commenters opposed the general requirement, while others sought clarifications. With respect to the general requirement, a large-bank industry trade association asserted that the proposal would be burdensome to comply with because the information on the written list of providers would require regular updating so that the list would only contain available settlement service providers and reflect the current fees that the providers charge for their services. A large bank commenter stated that it would be a large administrative burden for creditors to maintain current contact information of settlement service providers for various settlement service providers, particular information about street addresses. The same commenter also recommended the Bureau to consider allowing creditors to provide the consumer with a dedicated toll-free number or website to receive information about settlement service providers, in lieu of providing the written list. The commenter asserted that allowing the creditor to provide a phone number instead of the written list would reduce paper disclosures and would allow large lenders to tailor recommendations based on the specific geographical area of the consumer. The commenter additionally stated that providing consumers with a provider list that contains contact information for the creditors may suggest to the consumer that the creditor endorses the provider, even if the lender has little knowledge of the provider's service.

A mortgage broker commenter asserted that providing a list of settlement services that a borrower may shop for, rather than a list of providers of the services, would be a more appropriate requirement because it should not be a creditor's responsibility to provide a borrower with a list of providers. The commenter also expressed concern that the creditor would be subject to tolerance rules if the written list of providers must include more than one provider's contact information for a settlement service, but fee estimates are disclosed for only one provider, and the borrower chooses a different provider on the list for the settlement service. A title company commenter expressed concern that it may be difficult for a creditor to prepare a list identifying available providers if the consumer or the property is located in a geographical area with which it is unfamiliar. It further noted that it believed independent settlement service providers are concerned that consumers would only choose the settlement service providers disclosed on the list. Some commenters, including two State bar associations from states where an attorney is required to conduct real estate closings, asserted that the written lists may limit the right of consumers to select settlement agents.

Industry trade associations representing mortgage brokers and banks asserted that the proposal would harm small settlement service providers. The commenters asserted that creditors would want to manage their liability risk unless they are relatively certain of a provider's availability to perform the service for which it was listed and of the fee the provider charges for the service. Accordingly, the commenters asserted that creditors' likely response would be listing a small number of very large providers that offer services over a wide area to reduce their compliance burden. Some commenters objected to the listing of hazard insurance providers on the written list. The commenters asserted that the final rule should not require creditors to list hazard insurance providers because consumers do not have difficulty finding such providers and the requirement may disadvantage small providers of hazard insurance because banks would want to manage the burden of monitoring their fees and availability by listing large providers.

Industry reaction to whether additional guidance on the content and format of the proposed written list was mixed. A national provider of title insurance and settlement services stated that additional guidance regarding the content and format of the written list of providers is unnecessary. In contrast, a number of industry commenters sought guidance on various aspects of the proposal. An industry trade association representing credit unions generally stated that it supported the Bureau's proposal to include more detailed requirements for the written list of providers. Industry trade associations representing banks and mortgage lenders asked the Bureau to clarify whether the creditor must list more than one provider for a settlement service if more than one provider is available. They also asserted that if the creditor must list some minimum number of providers for a settlement service, then the rule must clarify what that minimum number is. The trade association commenters further asserted that there will be significant compliance burden for creditors to list more than one because the creditor must maintain multiple relationships with providers to track their fees and likely availability. The commenters additionally stated that the burden is difficult to justify because information about settlement service providers is readily available online.

The trade group commenters asserted that the burden may be especially great on creditors that maintain lists of providers with whom they prefer to do business because in some cases, such lists contain multiple providers being listed for the same service. The commenters stated that they recommend that if the creditor lists providers that include providers in which they have a preferred client-vendor relationship, the creditor should not be required to list all such providers because it would likely contain too much information. The commenters also expressed concern about compliance burden because creditors would have to monitor the prices charged by their preferred providers and the providers' availability. The commenters further stated that the compliance burden of having to provide the full list of preferred providers for a settlement service would force creditors to direct consumers to lender-required providers.

The trade association commenters also requested clarification on how much flexibility creditors have when listing title services. The commenters stated that the HUD RESPA FAQs about the written list of providers state that title services may be subdivided into two categories: closing services and lender's title insurance and related services. The commenters stated that title service providers offer different title service packages, and accordingly, they asserted that the Bureau should provide additional flexibility to creditors if they list title services on the written list. The trade association commenters also asserted that the rule should clarify that disclosing an affiliate on the written list would not make the affiliate a required provider as long as the creditor lists unaffiliated providers. The commenters additionally sought clarification whether the written list of providers must be provided again if the creditor provides the consumer with a revised Loan Estimate.

A State trade association representing bankers also sought clarification on how many providers for each settlement service must be listed. It additionally asserted that form H-27(B), which the Bureau proposed as a sample form of the written list of providers, made it unclear whether, with respect to a settlement service for which the creditor lists more than one service provider, the creditor must list the estimated fee that each listed service provider charges for that service, because although two providers are identified on form H-27(B) as providing survey services, the form only displays the fee of one of the service providers. The commenter also asserted that if a creditor lists multiple providers of the same service and the fees charged by those providers vary, then the creditor is likely to list the highest fee unless the creditor can disclose the fees as a range of fees. The commenter stated that listing the most expensive fee does not benefit consumers because they may not realize that the fees for a particular service vary by provider.

A national association representing Federally-chartered credit unions sought clarification on whether the written list can be provided in the same transmittal as the Loan Estimate. If the creditor uses mail to send the Loan Estimate, the commenter asked if the list may be included in the same envelope on a separate piece of paper from the disclosures required by § 1026.19(e)(1). If the creditor sends the Loan Estimate electronically, the commenter asked whether the creditor may provide the written list on a separate page from the disclosures required by § 1026.19(e)(1). A large bank commenter asked the Bureau to clarify whether a creditor could satisfy the requirement that the creditor must list service providers that perform the service where the consumer or property is located by listing vendor management companies.

An industry trade association representing settlement and escrow agents stated that the Bureau should expand the scope of § 1026.19(e)(1)(vi) to prohibit creditors from imposing background checks or similar requirements on settlement and title service providers before the creditor agrees to use the provider's services if the providers are in good standing to conduct business in the applicable jurisdiction. The commenter referred to these requirements as vetting requirements. The commenter stated that some creditors are relying on a Bureau-issued supervisory bulletin, CFPB 2012-3 (Apr. 12, 2012), as a pretext to impose vetting requirements on independent settlement and escrow agents, even though the agents are in good standing in their State and are often members of State and industry trade associations. Similarly, the Bureau received comments from settlement and title agents that suggested that the Bureau adopt a final rule that would define the term "third party provider" and then expressly exempt settlement and title agents from the definition. The Bureau believes that it received these comments because a number of settlement and title agent commenters were also concerned about the above-referenced supervisory bulletin and notes that some commenters expressed the concern that the vetting requirements were included in the proposal.

Final Rule

The Bureau has considered the comments and decided to finalize § 1026.19(e)(1)(vi) largely as proposed. Because § 1026.19(e)(1)(vi) reflects the current requirements, the Bureau does not believe that creditors would be unduly burdened by the requirements in this final rule. The Bureau also believes that information asymmetry is pervasive in the mortgage origination process. Accordingly, the Bureau believes that if the creditor permits a consumer to shop for a settlement service, it is appropriate to require creditors to provide consumers with a written list that identifies available providers of that service. The Bureau recognizes that a creditor originating a loan in a geographical area with which it is unfamiliar may have less familiarity with the mortgage market in that area, but the Bureau believes that the creditor nonetheless has better access to information than the consumer about settlement service providers in the geographical area.

The Bureau believes that providing consumers with a toll-free number or a website instead of a written list would be inefficient substitutes because they introduce an extra step into the shopping process. A consumer that receives a written list with the service provider's contact information could directly contact the service provider. Additionally, to comply with the current rule, creditors that permit shopping would already have to monitor the availability of settlement service providers and the fees charged by the providers, and thus they currently are ordinary business activities. Accordingly, the final rule should not impose additional burden.

The Bureau also does not believe that it would be burdensome for the creditor to include a service provider's street address. Comment 19(e)(1)(vi)-4 does not state that § 1026.19(e)(1)(vi) requires the provision of addresses. Rather, it explains that to comply with the identification requirement in § 1026.19(e)(1)(vi)(C), the creditor must provide sufficient information to allow the consumer to contact the service provider, and that a creditor that lists the provider's address, along with its telephone number and the name under which the provider conducts business, would have provided sufficient information. Accordingly, listing an available provider's street address is not required by § 1026.19(e)(1)(iv)(C), but a creditor that does not list the street address must demonstrate that the information it provided is sufficient information that allows the consumer to contact the service provider.

With respect to the argument that small settlement service providers may be harmed because a creditor's likely response to reduce compliance burden would be to list a small number of very large providers that offer services over a wide area, the Bureau believes that the creditor would not comply with the availability requirement in § 1026.19(e)(1)(vi)(C) if the service provider listed does not provide services where the consumer or the property is located. But the Bureau understands that small, independent settlement service providers may be more likely to operate outside of large metropolitan areas than larger settlement service providers. Accordingly, creditors may have to list small, independent settlement service providers in some areas, rather than larger providers, to comply with § 1026.19(e)(1)(vi)(C). For additional reasons, the Bureau does not believe independent settlement service providers will be negatively impacted because of the inclusion of affiliate charges in the points and fees thresholds under the

Bureau's ATR and HOEPA rulemakings. The Bureau believes that the motivation to avoid exceeding those points and fees thresholds may deter some creditors from using affiliated service providers for settlement services. Accordingly, the Bureau believes that they will be represented on the list because for a given settlement service, the creditor must list settlement service providers that provide services where the consumer or property is located.

In response to the concern that that the written list of providers may suggest to the consumer that the creditor endorses the provider, the Bureau notes that comment 19(e)(1)(vi)-6 clarifies that the creditor may include a statement on the written list that the listing of a settlement service provider does not constitute an endorsement of that service provider. With respect to the assertion that the written list of providers may limit the right of consumers to select settlement agents, the final rule requires (consistent with the proposal) that if a creditor permits the consumer to shop for a settlement service, then the creditor must state on the written list that the consumer may choose a different provider for that service. This statement is illustrated on form H-27(A) of appendix H to Regulation Z in this final rule.

Additional guidance. The Bureau has considered requests related to additional guidance and is finalizing the proposed rule and commentary with modifications to address questions raised by the commenters. With respect to requests for guidance that did not lead the Bureau to adjust the proposed rule and commentary, the Bureau believes that the adjustments were not needed because the final rule text and commentary are sufficiently clear.

As noted above, some commenters expressed concern about how many available providers of a settlement service a creditor must list. The Bureau is adjusting final § 1026.19(e)(1)(vi)(C) to provide that the creditor must identify at least one available provider for each settlement service for which the consumer is permitted to shop. The Bureau understands that this is consistent with the informal guidance provided by HUD with respect to the requirement to provide the written list under current Regulation X, and thus, believes that this adjustment will facilitate compliance.

With respect to the request that the Bureau provide creditors with additional flexibility with respect to the listing of title services, the Bureau notes that this final rule permits the creditor to provide a more detailed breakdown of title-related services than what is currently permitted under existing HUD RESPA FAQs. *See* comments 37(f)(2)-3, -4, and 37(f)(3)-3. The Bureau also notes that form H-27(B) of appendix H to Regulation Z in this final rule contains a sample written list that illustrates the listing of title services on the written list. With respect to the request that the final rule should clarify that disclosing an affiliated service provider on the written list would not make the affiliated provider a required provider as long as the creditor lists unaffiliated providers, the Bureau declines. The Bureau does not believe that an affiliated provider is a required provider if the creditor lists the affiliated provider under a heading that clearly states that the consumer can select the provider or shop for different providers, and accordingly, does not believe clarification is necessary.

On the question of listing hazard insurance providers on the written list of providers, hazard insurance would not have been among the services that the creditor would have been required to identify pursuant to § 1026.37(f)(3). Therefore, hazard insurance providers do not need to be listed on the written list of providers. Comment 19(e)(1)(vi)-2, which the Bureau is adopting as proposed, explains that the creditor should look to § 1026.37(f)(3) for guidance on how the creditor must identify the services for which the consumer is permitted to shop. However, the Bureau has noted that passing references to homeowner’s insurance in proposed comments 19(e)(1)(vi)-1 and -6 could have caused confusion on this point, so it has removed that language in the final commentary adopted in this final rule. With respect to questions about the creditor's obligation to disclose the fees of the settlement service providers the creditor lists on the written list of providers, the Bureau notes § 1026.19(e)(1)(iv) does not require creditors to list the estimated fees of the service providers, although form H-27(A) of appendix H to Regulation Z adopted in this final rule does provide creditors the space to do so.

Section 1026.37(f)(3), as adopted, requires the creditor to itemize on the Loan Estimate the estimated amount for each of the services for which a consumer can shop. Even if the creditor lists on the written list under § 1026.19(e)(1)(vi)(C) more than one service provider for a settlement service that it permits the consumer to shop for, the creditor must itemize on the Loan Estimate only one estimated cost of that service for one of the service providers listed. This estimated cost would be the amount used for purposes of the good faith analysis under § 1026.19(e)(3). However, nothing in the final rule prohibits a creditor from identifying the estimated fee of each service provider listed for a settlement service on the written list under § 1026.19(e)(1)(vi).

With respect to the question of whether the creditor must provide the consumer with a second written list of providers whenever the creditor provides a revised Loan Estimate to the consumer pursuant to § 1026.19(e)(4), the Bureau believes that § 1026.19(e)(1)(vi)(C), which the Bureau is adopting as proposed for reasons set forth in this section-by-section analysis, clearly explains that the creditor is required to provide the written list only once, in accordance with the timing requirement that applies to the delivery of the original Loan Estimate set forth in § 1026.19(e)(1)(iii). With respect to the question of whether the creditor may provide the written list in the same transmittal as the Loan Estimate and whether the creditor must provide the list on a separate page from the disclosures required by § 1026.19(e)(1)(i), the Bureau notes that

§ 1026.19(e)(vi)(C) requires the written list to be provided separately from the disclosures required under § 1026.19(e)(1)(i). In addition, the requirements set forth in § 1026.37(o)(1) applies whenever the creditor provides the Loan Estimate with any other documents or disclosures. That provision states that the Loan Estimate must be provided on separate pages that are segregated from other documents or disclosures. This final rule does not prohibit a creditor from providing the written list in the same transmittal as the Loan Estimate.

With respect to the question of whether a creditor may comply with the requirements of § 1026.19(e)(1)(vi)(C) by listing vendor management companies, the availability requirement in proposed § 1026.19(e)(1)(vi)(C) requires that an entity that a creditor lists on the written list of providers for a particular service be available to provide the service. A creditor that lists a vendor management company on the written list for a particular service would not comply with § 1026.19(e)(1)(vi)(C) if the vendor management company cannot ensure that the service for which it is listed can be performed by its employees or contractors in the area where the consumer or property is located, because it would not be available for purposes of § 1026.19(e)(1)(iv)(C). Lastly, with respect to requests to adjust the proposal to prohibit creditors from imposing background checks and similar requirements on settlement, and title agents, the proposal would not have imposed on the creditor an obligation to impose vetting requirements on settlement agents, nor prohibited such vetting, nor sought comment on the issue.

Accordingly, for the reasons stated above, the Bureau is adopting § 1026.19(e)(1)(vi)(A) as proposed, and § 1026.19(e)(1)(vi)(B) substantially as proposed, with revisions to enhance clarity. For the reasons discussed above, the Bureau is adjusting proposed § 1026.19(e)(1)(vi)(C) in response to comments received about how many service providers must a creditor identify on the written list for each settlement service for which a consumer is permitted to shop. As adopted, § 1026.19(e)(1)(vi)(C) provides that if the consumer is permitted to shop for a settlement service, the creditor shall provide the consumer with a written list identifying available providers of that settlement service and stating that the consumer may choose a different provider for that service. It additionally provides that the creditor must identify a minimum of one available provider for each settlement service for which the consumer is permitted to shop. Section 1026.19(e)(1)(vi)(C) further provides that the creditor shall provide this written list of settlement service providers separately from the disclosures required by § 1026.19(e)(1)(i) but in accordance with the timing requirements in § 1026.19(e)(1)(iii).

Comments 19(e)(1)(vi)-1 through -7 are adopted substantially as proposed. As noted, the Bureau modified proposed comments 19(e)(1)(vi)-1 and -6 to address confusion about whether hazard insurance carriers must be listed in the written list of providers required by § 1026.19(e)(1)(vi)(C), and the Bureau is modifying proposed comment 19(e)(1)(vi)-4 because final § 1026.19(e)(1)(vi)(C) states expressly that at least one service provider must be identified for each settlement service for which the consumer is permitted to shop. The Bureau is adopting § 1026.19(e)(1)(vi)(A) through (C), and its commentary, pursuant to the Bureau's authority under sections 105(a) of TILA, 19(a) of RESPA, and, for residential mortgage loans, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act, as described in the proposal.

19(e)(2) Predisclosure Activity

To promote the ability of consumers to shop for and evaluate available options for credit, the Bureau proposed several provisions in proposed § 1026.19(e)(2) that would have restricted certain activities by creditors that may occur prior to the receipt by the consumer of the Loan Estimate. These provisions include restrictions on imposing fees on consumers, a requirement to place a statement on written estimates of loan terms or costs specific to the consumer that creditors may provide to the consumer before providing the Loan Estimate to the consumer to differentiate the written estimates from the Loan Estimate, and a prohibition that the creditor may not require the consumer to submit verifying information related to the consumer's application. These provisions are described in detail below in the section-by-section analyses of § 1026.19(e)(2)(i), (ii), and (iii), respectively. In addition, see part VI for a discussion of the specific effective date applicable to § 1026.19(e)(2).

19(e)(2)(i) Imposition of Fees on Consumer

The Bureau proposed § 1026.19(e)(2)(i), which would have prohibited a creditor or any other person from imposing a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to § 1026.19(e)(1)(i) before the consumer has received the Loan Estimate and indicated an intent to proceed with the transaction, except for a bona fide and reasonable fee for obtaining the consumer's credit report. As set forth below, the general fee restriction was set forth in proposed § 1026.19(e)(2)(i)(A), and the exception was set forth in proposed § 1026.19(e)(2)(i)(B). Both provisions are discussed in greater detail below.

19(e)(2)(i)(A) Fee Restriction.

Section 128(b)(2)(E) of TILA provides that the "consumer shall receive the disclosures required under [TILA section 128(b)] before paying any fee to the creditor or other person in connection with the consumer's application for an extension of credit that is secured by the dwelling of a consumer." 15 U.S.C. 1638(b)(2)(E). This provision is implemented in § 1026.19(a)(1)(ii). Although RESPA does not contain a similar provision, Regulation X does. *See* § 1024.7(a)(4). However, unlike Regulation Z, Regulation X prohibits a consumer from paying a fee until the consumer indicates an intent to proceed with the transaction after receiving the disclosures. *Id.* As discussed below, both Regulation Z and Regulation X provide an exception only for the cost of obtaining a credit history or credit report, respectively.

Thus, Regulation X requires consumers to take an additional affirmative step before new fees may be charged. In the proposal, the Bureau stated its belief that the goals of the integrated disclosures are best served by adopting the approach under Regulation X. The Bureau explained that the integrated disclosures were designed to facilitate the making of informed financial decisions by consumers, and expressed concern that this goal would be inhibited if fees are imposed on consumers before a consumer indicates an intent to proceed. The Bureau noted that for example, after reviewing the Loan Estimate a consumer may be uncertain that the disclosed terms are in the consumer's best interest or that the disclosed terms are those which the consumer originally requested. However, if fees may be imposed before the consumer decides to proceed with a particular loan, consumers may not take additional time to understand the costs and evaluate the risks of the disclosed loan. The Bureau also stated its intent for consumers to use the integrated disclosures to compare loan products from different creditors. The Bureau expressed concern that if creditors can impose fees on consumers once the Loan Estimate is delivered, but before the consumer indicates intent to proceed, shopping may be inhibited.

The Bureau noted that, for example, after reviewing the Loan Estimate a consumer may be uncertain that the disclosed terms are the most favorable terms the consumer could receive in the market. However, if fees may be imposed before the consumer decides to proceed with a particular loan, consumers may determine that too much cost has been expended on a particular Loan Estimate to continue shopping, even though the consumer believes more favorable terms could be obtained from another creditor. The Bureau also expressed concern that consumers would conclude that obtaining a Loan Estimate from multiple creditors is too costly if each creditor can impose fees for each Loan Estimate.

Accordingly, pursuant to its authority under TILA section 105(a) and 128(b)(2)(E) and RESPA section 19(a), the Bureau proposed § 1026.19(e)(2)(i)(A), which would have provided that neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application before the consumer has received the disclosures required by § 1026.19(e)(1)(i) and indicated to the creditor an intent to proceed with the transaction described by those disclosures. Proposed comment 19(e)(2)(i)(A)-1 would have explained that a creditor or other person may not impose any fee, such as for an application, appraisal, or underwriting, until the consumer has received the disclosures required by § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction. The only exception to the fee restriction would have been to allow the creditor or other person to impose a bona fide and reasonable fee for obtaining a consumer's credit report, pursuant to proposed § 1026.19(e)(2)(i)(B).

Proposed comment 19(e)(2)(i)(A)-2 would have explained that the consumer may indicate an intent to proceed in any manner the consumer chooses, unless a particular manner of communication is required by the creditor, provided that the creditor does not assume silence is indicative of intent. The proposed comment would have clarified that the creditor must document this communication to satisfy the requirements of § 1026.25. The proposed comment would have also included illustrative examples.

Proposed comment 19(e)(2)(i)(A)-3 would have discussed the collection of fees and clarified that at any time prior to delivery of the required disclosures, the creditor may impose a credit report fee as provided in § 1026.19(e)(2)(i)(B), but that the consumer must receive the disclosures required by § 1026.19(e)(1)(i) and indicate an intent to proceed before paying or incurring any other fee in connection with the consumer's application. Proposed comment 19(e)(2)(i)(A)-4 would have provided illustrative examples regarding these requirements.

Proposed comment 19(e)(2)(i)(A)-5 would have clarified that, for purposes of § 1026.19(e), a fee is “imposed by” a person if the person requires a consumer to provide a method for payment, even if the payment is not made at that time. The proposed comment would have provided examples that a creditor may not require the consumer to provide a $500 check or a credit card number to pay a “processing fee” before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and the consumer subsequently indicates intent to proceed. The proposed comment would have further clarified that the creditor in this example would not comply with § 1026.19(e)(2) even if the creditor did not deposit the check or charge the card until after the disclosures required by § 1026.19(e)(1)(i) were received by the consumer and the consumer subsequently indicated intent to proceed. The proposed comment would have further explained that the creditor would have complied with § 1026.19(e)(2) if the creditor required the consumer to provide a credit card number if the consumer’s authorization was only to pay for the cost of a credit report. The proposed comment would have clarified that this would comply with § 1026.19(e)(2) even if the creditor maintained the consumer’s credit card number on file and charged the consumer a $500 processing fee after the disclosures required by § 1026.19(e)(1)(i) were received and the consumer subsequently indicated an intent to proceed, provided that the creditor requested and received a separate authorization for the processing fee charge from the consumer after the consumer received the disclosures required by § 1026.19(e)(1)(i).

19(e)(2)(i)(B) Exception to Fee Restriction

As noted above, § 1026.19(a)(1)(iii) of Regulation Z currently provides that a person may impose a fee for obtaining a consumer’s credit history prior to providing the good faith estimates, which is the lone exception to the general rule established by § 1026.19(a)(1)(ii) that fees may not be imposed prior to the consumer's receipt of the disclosures. Section 1024.7(a)(4) of Regulation X contains a similar exception, but it differs in two important respects. First, Regulation Z provides that the fee may be imposed for a consumer's "credit history," while Regulation X specifies that the fee must be for the consumer's "credit report." The Regulation Z provision could be read as permitting a broader range of activity than just acquiring a consumer's credit report. The Bureau proposed to adopt the terminology used by Regulation X, concluding that the purposes of the integrated disclosures were better served by the more restrictive language. The Bureau stated that consumers should be able to receive a reliable estimate of mortgage loan costs with as little up-front expense and burden as possible, while creditors should be able to receive sufficient information from the credit report alone to develop a reasonably accurate estimate of costs.

Second, existing commentary under Regulation Z provides that the fee charged pursuant to § 1026.19(a)(1)(iii) may be described or referred to as an "application fee," provided the fee meets the other requirements of § 1026.19(a)(1)(iii). The Bureau, however, proposed for purposes of the integrated disclosures to require a fee for a credit report to be disclosed with the more precise label under the theory that consumers may be more likely to understand that a credit report fee is imposed if a fee for the purpose of obtaining a credit report is clearly described as such, and compliance costs are generally reduced when regulatory requirements are standardized. Accordingly, the Bureau proposed § 1026.19(e)(2)(i)(B), which would have provided that a person may impose a bona fide and reasonable fee for obtaining the consumer's credit report before the consumer has received the disclosures required by § 1026.19(e)(1)(i). Proposed comment 19(e)(2)(i)(B)-1 would have clarified that a creditor or other person may impose a fee before the consumer receives the required disclosures if it is for purchasing a credit report on the consumer, provided that such fee is bona fide and reasonable in amount. The proposed comment would have also stated that the creditor must accurately describe or refer to this fee, for example, as a “credit report fee.”

Comments

A large non-depository lender expressed the concern that if the proposal was finalized as proposed, the practice of requiring a method of payment prior to providing the Loan Estimate would be a violation of the rule. The commenter, along with a number of other commenters that included a large bank commenter and industry trade associations representing banks and mortgage lenders, asserted that creditors should be permitted to obtain the consumer’s credit card information before a consumer receives the Loan Estimate and indicates an intent to proceed, regardless of whether the creditor intends to charge the consumer the fee for obtaining the consumer’s credit report. The trade association commenters asserted that restricting the creditor’s ability to obtain the consumer’s credit card information imposes an operational burden on creditors that do not charge a consumer for a credit report fee until the consumer has indicated an intent to proceed. The commenters predicted that adopting the proposed rule would make it likely that creditors will change their current practice and begin charging the credit report fee before the consumer indicates an intent to proceed.

The Bureau also received requests from industry commenters that the Bureau clarify how to determine when a consumer has indicated an intent to proceed. The trade association commenter requested that the Bureau clarify that a lender may require the consumer to indicate the intent to proceed in a specific manner, as long as it is reasonable. The commenters also described specific examples and asked the Bureau to provide guidance on whether each specific example constitutes the consumer’s intent to proceed. Similarly, a community bank commenter asserted that the Loan Estimate should contain a signature line, which could be signed by the consumer to indicate the consumer's intent to proceed.

The trade association commenter and the large bank commenter additionally requested that the Bureau clarify what the Bureau meant when it stated in proposed § 1026.19(e)(2)(i)(A)-5 that a creditor must request and receive a separate authorization for a new fee before it charges the consumer the new fee on the credit card the creditor had previously used to charge the consumer for the cost of a credit report. The commenters asserted that it was unclear whether the "separate authorization" refers to an authorization from the credit card company or a separate verbal authorization from the consumer to the creditor with respect to charging the consumer's credit card. The trade association commenter further requested clarification on whether the consumer's explicit expression of intent to proceed provides the lender with separate authorization to charge additional fees. Finally, the Bureau also received comments from industry commenters that asserted that the creditor should be able to charge the consumer a "pre-application fee" to compensate the creditor for pre-approval activities, such as the issuance of pre-application worksheets.

Final Rule

The Bureau has considered the comments, and for the reasons set forth below, is finalizing § 1026.19(e)(2)(i) substantially as proposed. The Bureau believes that it is important that the consumer takes the affirmative step to indicate an intent to proceed with the mortgage loan transaction before the creditor requests a method of payment from the consumer, other than a method of payment to pay for the cost of a credit report. The Bureau recognizes that requiring a method of payment does not necessarily mean that the consumer will actually be charged. However, the Bureau is concerned that consumers' use of the integrated disclosures to make informed financial decisions and to compare loan products from different creditors may be inhibited if creditors can require that the consumer provide the consumer's credit card number without a specific, narrowly tailored purpose before the consumer indicates an intent to proceed with the transaction. This may make a consumer feel committed to the creditor even though, after reviewing the Loan Estimate, the consumer may be uncertain that the disclosed terms are in the consumer's best interest or that the disclosed terms are those for which the consumer originally asked. The consumer may also feel uncomfortable providing the consumer's credit card number to multiple creditors, if multiple creditors intend to keep the numbers on file to charge at a later date. In addition, the Bureau understands that some creditors may currently require consumers to provide their credit card numbers at the time of application to provide a "deposit" that is either charged after application if the consumer does not consummate the transaction, or is applied towards the consumer's closing costs if the transaction is consummated. Under § 1026.19(e)(2)(i) adopted in this final rule, a creditor is not permitted to require the consumer to provide the consumer's credit card number before the consumer receives the Loan Estimate and indicates an intent to proceed, even if the creditor promises not to charge the card until after such time. *See* comment 19(e)(2)(i)(A)-5.

The Bureau has revised the final regulation text to address commenters' request for additional clarification with respect to determining whether a consumer has indicated an intent to proceed. Proposed comment 19(e)(ii)(A)-2 would have explained, among other things, that a creditor can require a particular method of communication for the consumer to indicate an intent to proceed, as long as the creditor can document this communication to satisfy the requirements of § 1026.25. But in light of the comments requesting additional clarification with respect to determining whether a consumer has indicated an intent to proceed, the Bureau believes incorporating the statement, set forth in proposed comment 19(e)(ii)(A)-2, that the consumer may indicate an intent to proceed in any manner the consumer chooses, unless the creditor requires a particular manner of communication into final § 1026.19(e)(2)(i)(A) as part of the regulatory text would facilitate compliance. As adopted, § 1026.19(e)(2)(i)(A) provides that except as provided in § 1026.19(e)(2)(i)(B), neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to § 1026.19(e)(1)(i) before the consumer has received the disclosures required under § 1026.19(e)(1)(i) and indicated to the creditor an intent to proceed with the transaction described by those disclosures. Section 1026.19(e)(2)(i)(A) further provides that a consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor.

The Bureau declines to make other changes to the rule requested by commenters. With respect to the request that the Loan Estimate contain a signature line that could be signed by the consumer to indicate the consumer's intent to proceed, the Bureau believes that allowing the Loan Estimate to be signed by the consumer to document the consumer's intent to proceed is contradictory to the intent of TILA section 128(2)(B)(i). This section of TILA, implemented in this final rule in § 1026.37(n)(1), provides that consumers are not required to proceed with the transaction merely because they have received the Loan Estimate or signed a loan application. Specifically, form H-24 of appendix H to Regulation Z, which illustrates the optional signature line permitted on the Loan Estimate under § 1026.37(n)(1), states that the consumer's signature only documents receipt of the Loan Estimate. The Bureau also does not believe that additional clarification is needed to explain what "separate authorization" means in comment 19(e)(2)(i)(A)-5, which is adopted as proposed. The Bureau believes that the term "separate authorization," as used in the comment, clearly means a new authorization, whether verbal or written, from the consumer for the creditor to charge new fees. The Bureau believes that an expression of a consumer's intent to proceed with a transaction is not the same as an authorization to the creditor to charge additional fees.

Lastly, the Bureau does not believe that the creditor should be able to impose on a consumer a "pre-application fee" before the consumer has received the Loan Estimate and indicated an intent to proceed. As discussed above, both Regulations X and Z contain provisions that create exceptions to the general prohibition on the creditor's ability to impose fees on a consumer prior to providing the RESPA GFE and early TILA disclosure. The Bureau incorporated the terminology used by Regulation X in the proposal because the Bureau believed that incorporating the more narrow and precise terminology used by Regulation X would better ensure that consumers receive a reliable estimate of mortgage loan costs with as little up-front expense and burden as possible.

The Bureau believes permitting creditors to impose a "pre-application fee" on the consumer is problematic. First, although the Bureau recognizes that the creditor uses resources to provide pre-application worksheets or other pre-qualification services, the worksheets are not subject to the good faith requirements of TILA section 128(b)(2)(A) and RESPA section 5 and may be unreliable. Accordingly, expanding the exception to a "pre-application fee" would be contrary to the Bureau's intent of ensuring that consumers receive a reliable estimate of mortgage loan costs with as little up-front expense and burden as possible. Second, the Bureau is concerned that the description of a fee as a "pre-application fee" is imprecise and that there may not be an industry standard to help determine what the fee is paying for, which does not promote the informed use of credit. The lack of precision and uniformity could also complicate supervision and compliance. Additionally, consumers may not have any information available to them regarding what services are included in the fee.

For the reasons stated above, the Bureau is adopting § 1026.19(e)(2)(i)(A) and (B) largely as proposed, pursuant to its authority under TILA section 105(a) and 129(b)(2)(E), and RESPA section 19(a). The Bureau is also finalizing comments 19(e)(2)(i)(A)-1 through -5, and comment 19(e)(2)(i)(B)-1 substantially as proposed, except for revisions to improve the clarity of the proposed comments. The Bureau believes that it is important that the consumer takes the affirmative step to indicate an intent to proceed with the mortgage loan transaction before the creditor requests a method of payment from the consumer, other than a method of payment to pay for the cost of a credit report. The Bureau recognizes that requiring a method of payment does not necessarily mean that the consumer actually will be charged. However, the Bureau's goals that consumers use the integrated disclosures to make informed financial decisions and that consumers use the disclosure to compare loan products from different creditors may be inhibited if the Bureau permits a creditor to require that the consumer provide the consumer's credit card number without a specific, narrowly-tailored purpose before the consumer indicates an intent to proceed.

19(e)(2)(ii) Written Information Provided to Consumer

The Bureau proposed to require creditors that provide a written estimate of loan terms or costs specific to a consumer, before the consumer has received the Loan Estimate and indicated an intent to proceed, to include a statement on such estimate to distinguish the estimate from the Loan Estimate. The Bureau understands that consumers often request written estimates of loan terms before receiving the RESPA GFE or early TILA disclosure. The Bureau recognizes that these written estimates may be helpful to consumers. However, the Bureau expressed concern in the proposal that consumers could confuse such written estimates, which are not subject to the good faith requirements of TILA section 128(b)(2)(A) and RESPA section 5 and may therefore be unreliable, with the Loan Estimate disclosures proposed under § 1026.19(e)(1)(i), which must be made in good faith. The Bureau was also concerned that unscrupulous creditors may use formatting and language similar to the disclosures that would have been required under § 1026.19(e)(1)(i) to deceive consumers into believing that the creditor's unreliable written estimate is actually the disclosure that would have been required under § 1026.19(e)(1)(i). The Bureau found these concerns to be particularly important in light of section 1405(b) of the Dodd-Frank Act, which places emphasis on improving "consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures."

The Bureau believes that creditors may choose to issue, and consumers may want, preliminary written estimates based on less information than is needed to issue the disclosures required under § 1026.19(e)(1)(i). However, mortgage loan costs are often highly sensitive to the information that triggers the disclosures. The Bureau noted that as such, the disclosures that would have been required under proposed § 1026.19(e)(1)(i) may be more accurate indicators of cost than preliminary written estimates. The Bureau stated that consumers may better understand the sensitivity of mortgage loan costs to information about the consumer's creditworthiness and collateral value if consumers are aware of the difference between preliminary written estimates and disclosures required under § 1026.19(e)(1)(i). Additionally, section 1032(a) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to ensure the full, accurate, and effective disclosure of mortgage loan costs in a manner that permits consumers to understand the associated risks. The Bureau sought to foster consumer understanding of the reliability of the cost information provided, while permitting the use of preliminary written estimates, which may be beneficial to consumers.

Accordingly, pursuant to its authority under section 105(a) of TILA, section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act, the Bureau proposed to require creditors to distinguish between preliminary written estimates of mortgage loan costs, which are not subject to the good faith requirements under TILA and RESPA, and the disclosures required under § 1026.19(e)(1)(i), which are subject to these requirements. Proposed § 1026.19(e)(2)(ii) would have required creditors to provide consumers with a disclosure indicating that the preliminary written estimate is not the Loan Estimate required by RESPA and TILA, if a creditor provides a consumer with such written estimate of specific credit terms or costs before the consumer receives the disclosures under § 1026.19(e)(1)(i) and subsequently indicates an intent to proceed with the mortgage loan transaction. The Bureau concluded that the proposed provision is consistent with section 105(a) of TILA in that it would increase consumer awareness of the costs of the transaction by informing consumers of the risk of relying on preliminary written estimates, thereby assuring a meaningful disclosure of credit terms and promoting the informed use of credit. The Bureau also believed the proposal is consistent with section 129B(e) of TILA because permitting creditors to provide borrowers with a preliminary written estimate and the Loan Estimate required by TILA and RESPA without a disclosure indicating the difference between the two is not in the interest of the borrower.

Proposed comment 19(e)(2)(ii)-1 would have explained that § 1026.19(e)(2)(ii) applies only to written information specific to the consumer. It provided examples to illustrate the difference between written information specific to the consumer, such as an estimated monthly payment for a mortgage loan based on the estimated loan amount and the consumer’s estimated credit score, and non-individualized information such as a preprinted list of closing costs common in the consumer's area, or an advertisement as defined in § 1026.2(a)(2). This proposed comment would have also included a reference to comment 19(e)(1)(ii)-4 regarding mortgage broker provision of written estimates specific to the consumer.

Comments

The Bureau received largely supportive comments from industry commenters, but largely negative comments from consumer advocacy groups. A number of consumer advocacy groups expressed concerns regarding how non-binding, pre-application estimates have been used by creditors and mortgage brokers to deceive borrowers. They asserted that any creditor or broker using any document that is substantially similar to the Loan Estimate or Closing Disclosure should be subject to the requirements for such forms. The consumer advocacy groups asserted that the proposal would send a message that the Bureau condones the practice of providing consumers with non-binding estimates that have been used to deceive consumers. The commenters asserted that the disclaimer the Bureau proposed is inadequate. In joint comments, two national consumer advocacy groups observed that the Kleimann Testing Report contained a recommendation to design a more noticeable disclaimer, and asserted that the proposed disclaimer is only marginally more noticeable than the one tested. Accordingly, the national consumer advocacy group commenters expressed the belief that creditors would still be able to use pre-application worksheets to circumvent consumer shopping.

As noted, industry commenters generally expressed support for the proposal. For instance, a community bank commenter concluded that the proposed disclaimer would reduce consumer confusion. A national trade association representing credit unions generally expressed support for the proposed disclaimer. The trade association commenter supported the disclaimer, so long as the statement does not require significant redesign of the forms that creditors currently use as pre-application worksheets or the use of additional pages for the disclaimer. A State trade association representing banks commented regarding proposed form H-26(B) that its member banks would prefer to use their own version of a consumer-specific worksheet, rather than proposed form H-26(B).[193]

An industry trade association representing community banks agreed that the unregulated nature of pre-application estimates can cause confusion for consumers, but asserted that the proposed disclaimer would further confuse the consumer. The commenter suggested that the problem lies not with the worksheets, but with the belief by creditors that they must have the property address to issue the RESPA GFE. The commenter expressed concern that creditors are treating this as a requirement, and thus, the creditor must provide worksheets to consumers shopping for a mortgage loan, and then issue the Loan Estimate only after the consumer selects the property. As discussed in greater detail in the section-by-section analysis of § 1026.2(a)(3), the commenter recommended that the Bureau address the issue by making "property address" an optional item in the definition of "application" for the original Loan Estimate delivery requirement in purchase transactions.

A GSE commenter expressed concern that the proposed disclaimer could confuse consumers if the Bureau were to adopt, pursuant to the Bureau's 2012 Loan Originator Proposal, the requirement that the creditor must first provide the consumer with a quote for a comparable, alternative loan without any discount or origination points and/or fees (zero-zero alternative) before compensating a loan originator with a transaction-specific payment and charging the

[193] Proposed form H-26(B) would have illustrated the placement of the disclaimer on a consumer-specific worksheet for which a creditor uses a format similar to the proposed Loan Estimate in form H-24 of appendix H to Regulation Z.

consumer discount and origination points and fees. The GSE commenter believed that the zero-zero alternative would have been specific to the consumer and would be provided before the Loan Estimate. The GSE commenter argued that providing a disclosure that the consumer is meant to rely on for understanding pricing trade-offs in a document that contains the proposed disclaimer would cast doubt on the document's reliability and cause consumer confusion. An industry trade association representing mortgage bankers suggested that instead of finalizing this aspect of the Bureau's 2012 Loan Originator Proposal, the Bureau should permit creditors to inform the consumer that different loan programs with different mixes of rates and fees are available on the pre-application worksheets.

Final Rule

The Bureau is adopting § 1026.19(e)(2)(ii) and comment 19(e)(2)(ii)-1 largely as proposed, after considering the comments, and pursuant to its authority under section 105(a) of TILA, section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. As adopted, § 1026.19(e)(2)(ii) provides that if a creditor or other person provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the disclosures required under § 1026.19(e)(1)(i), the creditor or such person shall clearly and conspicuously state at the top of the front of the first page of the estimate in a font size that is no smaller than 12-point font: "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan." The Bureau is deleting the proposed timing requirement that the written estimate be provided before the consumer has indicated an intent to proceed with the transaction. The Bureau believes that this requirement suggests that a written estimate could be provided even though the Loan Estimate had been provided. The Bureau believes receiving a written estimate after the Loan Estimate has been provided will confuse consumers and create compliance burdens for industry. The Bureau is modifying proposed § 1026.19(e)(2)(ii) in response to consumer advocacy groups' concern that pre-application worksheets formatted in a way that is substantially similar to the Loan Estimate or Closing Disclosure can cause consumer confusion. Section 1026.19(e)(2)(ii) provides that a written estimate of terms or costs may not be made with headings, content, and format substantially similar to form H-24 or H-25of appendix H to Regulation Z.

With respect to the concerns raised about proposed form H-26(B). which would have provided a sample of the statement required by § 1026.19(e)(2)(ii) on a consumer-specific worksheet, the Bureau intended that the worksheet illustrated by proposed form H-26(B) provide an example of a worksheet that had a similar format as the proposed Loan Estimate. However, as discussed in greater detail in the section-by-section analysis of appendix H, the Bureau is concerned that worksheets similar in format to the Loan Estimate could confuse consumers, which was a concern raised by consumer advocacy group commenters. In addition, the Bureau is concerned that the sample caused confusion for industry commenters, which were concerned that the format of form H-26(B) would be required. As noted above, to address concerns raised by commenters about consumer confusion from worksheets similar in format to the Loan Estimate, the Bureau has modified § 1026.19(e)(2)(ii) to prohibit the use of a consumer-specific worksheet that is substantially similar in format to the Loan Estimate or the Closing Disclosure. Accordingly, the Bureau is not adopting proposed form H-26(B). The Bureau is, however, adopting the model form of the statement required by § 1026.19(e)(2)(ii), renumbered as form H-26. The Bureau believes that a creditor or other person providing consumer-specific written estimates may use forms they have already developed, provided that they add the disclaimer required by § 1026.19(e)(2)(ii) and that their forms are not substantially similar to form H-24 or H-25 of appendix H to Regulation Z.

With respect to the argument that consumers are becoming confused because current regulations prohibit provision of the RESPA GFE until the consumer has a specific property address, the Bureau notes that the final rule permits creditors to provide a consumer with a Loan Estimate without receiving information about the property address. As discussed in more detail above in the section-by-section analysis of § 1026.2(a)(3), the property address is not required to be received before a creditor may issue the Loan Estimate. Finally, with respect to concerns about the interactions between § 1026.19(e)(2)(ii) and the 2012 Loan Originator Proposal, the zero-zero alternative was not adopted in the Bureau's 2013 Loan Originator Final Rule.

19(e)(2)(iii) Verification of Information

The Bureau proposed in § 1026.19(e)(2)(iii) to prohibit creditors from requiring consumers to submit documents verifying information related to the consumer's application before providing the Loan Estimate. Section 1024.7(a)(5) of Regulation X currently provides that a creditor may collect any information from the consumer deemed necessary in connection with an application, but the creditor may not require, as a condition for providing a RESPA GFE, that the consumer provide supplemental documentation to verify the information the consumer provided on the application. HUD stated in its 2008 RESPA Final Rule that the prohibition was to prevent over-burdensome documentation demands on mortgage applicants, and to facilitate shopping by borrowers. 73 FR 68204, 68211 (Nov. 17, 2008).

The Bureau proposed to incorporate language similar to § 1024.7(a)(5) in the integrated disclosures rules in order to minimize the cost to consumers of obtaining Loan Estimates. The Bureau proposed § 1026.19(e)(2)(iii), which would have provided that a creditor shall not require a consumer to submit documents verifying information related to the consumer's application before providing the disclosures required by § 1026.19(e)(1)(i).

The Bureau made this proposal pursuant to its authority under section 105(a) of TILA, section 19(a) of RESPA, and, for residential mortgage loans, section 129B(e) of TILA. The Bureau stated its belief in the proposal that proposed § 1026.19(e)(2)(iii) would effectuate the purposes of TILA by reducing the burden to consumers associated with obtaining different offers of available credit terms, thereby facilitating consumers' ability to compare credit terms, consistent with section 105(a) of TILA. The Bureau also stated that this proposed provision would be consistent with section 129B(e) of TILA because requiring documentation to verify the information provided in connection with an application increases the burden on borrowers associated with obtaining different offers of available credit terms, which is not in the interest of the borrower.

Proposed comment 19(e)(2)(iii)-1 would have explained that the creditor may collect from the consumer any information that it requires prior to providing the early disclosures, including information not listed in § 1026.2(a)(3)(ii). However, the proposed comment would have clarified that the creditor is not permitted to require, before providing the disclosures required by § 1026.19(e)(1)(i), that the consumer submit documentation to verify the information provided by the consumer. The proposed comment would have also provided examples, stating that the creditor may ask for the names, account numbers, and balances of the consumer's checking and savings accounts, but the creditor may not require the consumer to provide bank statements, or similar documentation, to support the information the consumer provides orally before providing the disclosures required by § 1026.19(e)(1)(i). Further, proposed comment 19(e)(2)(iii)-1 would have referenced § 1026.2(a)(3) and the related commentary for guidance on the definition of application.

The proposed provision did not generate much comment. A software vendor commenter sought clarification on whether a creditor must refuse verifying documentation a consumer brings to the creditor in anticipation of such documentation being needed. The Bureau does not believe that verifying documentation should be needed prior to issuing a Loan Estimate. However, the final rule does not prohibit the creditor from accepting verifying documentation if the consumer proffers such documentation, provided that it is not required by the creditor before the creditor provides the Loan Estimate.

As noted above in the section-by-section analysis of § 1026.2(a)(3), based on comments responding to the Bureau's proposed definition of application, the Bureau understands that some creditors currently require a purchase and sale agreement prior to issuing the RESPA GFE and the early TILA disclosures in purchase transactions.

The Bureau is concerned that some creditors may use the purchase and sale contract as verification documentation to support information that it has asked the consumer to provide in connection with the consumer's application, such as the sale price or the property address, before the creditor issues the Loan Estimate, although as noted in the section-by-section analysis of § 1026.2(a)(3), the practice may be permissible under current Regulation X for purposes of the RESPA GFE in limited cases. Final comment 19(e)(2)(iii)-1 explains that a creditor is not permitted to require, before providing the disclosures required by § 1026.19(e)(1)(i), that the consumer submit documentation to verify the information provided by the consumer. The Bureau is adopting § 1026.19(e)(2)(iii) based on the same intent on which HUD based § 1024.7(a)(5), which is to prevent overly burdensome documentation demands on mortgage applicants, and to facilitate shopping by the consumer.

The Bureau believes that requiring a consumer to submit a purchase and sale contract so that the creditor can obtain information it would otherwise obtain from the consumer or other sources may constitute overly burdensome documentation and inhibit shopping because under such a demand a consumer would be required to become obligated to the purchase of real estate prior to obtaining a reliable estimate of the cost of financing such purchase. The Bureau notes that the creditor may revise the estimates provided in the original Loan Estimate based on receipt of changed information under § 1026.19(e)(3)(iv)(A). Accordingly, the Bureau believes that requiring the consumer to provide a purchase and sale contract before issuing the Loan Estimate would be in contravention of the prohibition on requiring verifying documentation being finalized under § 1026.19(e)(2)(iii). The Bureau is adjusting comment 19(e)(2)(iii)-1 to clarify that the creditor may not require the consumer to provide a purchase and sale agreement to verify information provided by the consumer before providing the disclosures required by § 1026.19(e)(1)(i).

Final Rule

Accordingly, the Bureau is finalizing § 1026.19(e)(2)(iii) and comment 19(e)(2)(iii)-1 substantially as proposed. Section 1026.19(e)(2)(iii) provides that the creditor or other person shall not require a consumer to submit documents verifying information related to the consumer's application before providing the disclosures required by § 1026.19(e)(1)(i). Final comment 19(e)(2)(iii)-1 explains that the creditor or other person may collect from the consumer any information that it requires prior to providing the early disclosures before or at the same time as collecting the information listed in § 1026.2(a)(3)(ii) and provides illustrative examples. However, the creditor or other person is not permitted to require, before providing the disclosures required by § 1026.19(e)(1)(i), that the consumer submit documentation to verify the information collected from the consumer. The comment also provides illustrative examples, including an example involving a purchase and sale contract, as described above, and refers to § 1026.2(a)(3) and its commentary for guidance regarding the definition of application. The Bureau is adopting § 1026.19(e)(2)(iii) and comment 19(e)(2)(iii)-1 pursuant to its authority under section 105(a) of TILA, section 19(a) of RESPA, and for residential mortgage loans, section 129(B) of TILA.

19(e)(3) Good Faith Determination for Estimates of Closing Costs

The Bureau's Proposal

The Bureau proposed to amend Regulation Z by: (1) incorporating and expanding existing Regulation X requirements that establish tolerance categories limiting the variation between the estimated amount of certain settlement charges included on the RESPA GFE and the actual amounts included on the RESPA settlement statement; and (2) applying these requirements to variations between the estimated amount of certain settlement charges included on the Loan Estimate and the actual amounts paid by or imposed on the consumer. Current Regulation X prohibits variations in origination charges and transfer taxes between the estimated amounts and the actual amounts unless one of six exceptions, such as a changed circumstance or a borrower-requested change, applies.[194] The Bureau proposed to expand this zero percent tolerance category of settlement costs to include fees paid to affiliates of the creditor and fees paid to lender-required settlement service providers (*i.e.*, settlement service providers that the

[194] For a discussion of changed circumstances and borrower-requested changes, see the section-by-section analysis of § 1026.19(e)(3)(iv).

creditor requires the consumer to use).[195] Currently under Regulation X, these costs are in the ten percent tolerance category, which also includes recording fees and charges paid to non-lender-required third party settlement service providers where the borrower uses a lender-identified settlement service provider, including charges for owner's title insurance. Costs in the ten percent tolerance category could increase between the estimated amount and the amount actually paid by or imposed on the consumer so long as the sum of all charges paid by or imposed on the consumer in this category does not exceed the sum of all such charges included on the RESPA GFE by more than ten percent. 12 CFR 1024.7(e)(2). As discussed in greater detail in the section-by-section analysis of § 1026.19(e)(3)(i), the Bureau proposed to incorporate these changes in that section.

Under the proposal, fees for lender-required services for which a creditor permits the consumer to choose the provider and the consumer selects a settlement service provider identified by the creditor would remain in the ten percent tolerance category. Recording fees and owner's title insurance would also stay in the ten percent tolerance category. *See* the section-by-section analysis of § 1026.19(e)(3)(ii) below.

Further, similar to the current regulation, a cap would not be applied to certain settlement costs such as prepaid interest and property insurance premiums. This aspect of the proposal is discussed in greater detail in the section-by-section analysis of § 1026.19(e)(3)(iii) below. Lastly, similar to the current regulation, under the Bureau's proposal, creditors would continue to be able to rely on any of six exceptions such as changed circumstances and borrower-requested changes to adjust any estimated settlement cost subject to a tolerance if the creditor establishes

[195] As proposed, the term "affiliate" would have meant any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956, 12 U.S.C. 1841(k). 77 FR 51167, fn. 141.

that one of the six exceptions is the reason for the cost to increase beyond the applicable tolerance.

The Bureau's rationale was based on the reasons described in the proposal (summarized below), and in reliance on its authority to prescribe standards for "good faith estimates" under TILA section 128 and RESPA section 5, as well as its general rulemaking, exception, and exemption authorities under TILA sections 105(a) and 121(d), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act and section 129B(e) of TILA.

The Bureau believed that creditors could develop accurate estimates of fees for settlement services charged by their affiliates and by lender-required providers, because creditors are aided by the increased level of knowledge and communication suggested by these types of relationships and the frequency of repeat business with a particular affiliate or lender-required settlement service provider. The Bureau also believed that lenders that were denying the opportunity of consumers to influence the quality and cost of settlement services through shopping by requiring consumers to use lender-required service providers should take greater responsibility for estimating settlement costs accurately and assume some of the risk of underestimation for failing to accurately estimate such costs.

The Bureau also believed that consumers benefit from having more reliable estimates of settlement costs. The Bureau believed that more reliable estimates are inherently beneficial. They enable consumers to make informed and responsible financial decisions. More reliable estimates also promote honest competition among industry providers that desire a fair and level playing field, and the existence of such a market for settlement services helps to prevent unnecessarily high settlement costs. Subjecting settlement costs to an enhanced reliability standard may also help to prevent financial surprises at the real estate closing that may greatly harm consumers.[196] The Bureau stated in the proposal that it believed that these benefits advance the principles upon which TILA and RESPA were founded, and advance the goals of the 2008 RESPA Final Rule, under which the current tolerance categories were established.

TILA. TILA section 128(b)(2)(A) requires creditors to provide good faith estimates of certain required disclosures not later than three business days after receipt of a consumer's written application for a closed-end mortgage loan that is also subject to RESPA. TILA section 128(b)(2)(D) also requires creditors to provide revised disclosures to consumers if the initially-disclosed APR becomes inaccurate, subject to a tolerance for accuracy, not later than three business days before consummation. TILA section 121(d) further establishes that the Bureau may create new tolerances for numerical disclosures other than the APR if the Bureau determines that such additional tolerances are necessary to facilitate compliance with TILA. Regulation Z § 1026.19(a)(1)(i) implements the good faith and delivery requirements of TILA section 128(b)(2)(A) in the context of certain mortgage loans. It requires creditors to make good faith estimates of the disclosures required by § 1026.18 by either delivering or placing the disclosures in the mail not later than the third business day after the creditor receives the consumer's written application.[197]

Although settlement charges have historically been the subject of RESPA, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to require creditors to disclose: "In the

[196] The Bureau stated in the proposal that settlement service providers such as appraisal management companies and title companies may be affiliated with the creditor. Because fees paid for appraisals and title-related services constitute a large percentage of total settlement service fees paid by consumers at consummation, permitting these fees to vary by ten percent may significantly increase the actual cost of obtaining a mortgage.

[197] Section 1026.18 of Regulation Z includes several disclosures related to the cost of credit, such as the amount financed, finance charge, and annual percentage rate. Section 1026.18(c)(3) also provides that the itemization of amount financed need not be delivered if the RESPA GFE is provided.

case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing . . . and the aggregate amount of other fees or required payments in connection with the loan." 15 U.S.C. 1638(a)(17). The term "settlement charges" is not defined under TILA. This amendment expands the disclosure requirements of TILA section 128(a) beyond the cost of credit to include all charges imposed in connection with the mortgage loan. The Bureau stated in the proposal that the amendment made no distinction between whether those charges relate to the extension of credit or the real estate transaction, or whether those charges are imposed by the creditor or another party, so long as the charges arise in the context of the mortgage loan settlement.

RESPA and HUD's 2008 RESPA Final Rule. A stated purpose of RESPA is that consumers should receive effective advance disclosures of settlement costs.[198] Further, the statute establishes the requirement that lenders must provide consumers with good faith estimates of settlement costs, which include most fees charged in connection with a real estate settlement, within three days of receiving a consumer's application for a mortgage loan.[199] HUD amended Regulation X with its 2008 RESPA Final Rule after a ten-year investigatory process that found RESPA's stated purposes were undermined by market forces. HUD found that cost estimates appearing on the RESPA GFE could be significantly lower than the amount ultimately charged at settlement, even though in most cases loan originators could estimate final settlement costs with great accuracy. *See* 73 FR 14030, 14039 (March 14, 2009). Further, consumers were often unable to challenge increases in settlement costs because many consumers found out about the

[198] RESPA section 2(b). 12 U.S.C. 2601.
[199] RESPA section 5(c). 12 U.S.C. 2604.

increases immediately before settlement, which was the point in time where they were in the weakest bargaining position.

Since the enactment of the 2008 RESPA Final Rule, however, concerns were identified that could undermine its goals. The first of such concerns was the treatment of fees paid to lender affiliates. The inclusion of such fees in the ten percent tolerance category means that they could increase by as much as ten percent prior to the real estate closing, in addition to increases based on changed circumstances and borrower-requested changes. The Bureau stated in the proposal that given that the affiliate relationship is inherently beneficial to the creditor, permitting affiliate fees to vary by as much as ten percent without a need to justify the increase may incent creditors to raise fees at closing solely to obtain all money available up to the ten percent tolerance.

The second of these concerns centers on the ability of consumers to shop for settlement service providers. As discussed above in the section-by-section analysis of § 1026.19(e)(1)(vi), HUD intended to promote shopping by giving some information to the consumer as a starting point to shop. It promulgated the requirement that loan originators must provide borrowers with a written list of providers if the loan originator permits a borrower to shop for third-party settlement services. In the proposal, the Bureau stated that the concern is that creditors have used the requirement to direct consumers to use only the providers that are on the written list, thereby turning the lists into "closed lists" of "preferred providers," and denying consumers the ability to influence the cost and quality of settlement services through shopping.

Dodd-Frank Act. As discussed above, sections 1032(f), 1098, and 1100A of the Dodd-Frank Act require integration of the disclosure provisions under TILA and RESPA, and sections 1098 and 1100A of the Act further provide that the purpose of the integrated disclosures is "to facilitate compliance with the disclosure requirements of [RESPA] and [TILA], and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures." The Bureau stated its belief in the proposal that these amendments require integration of the regulations related to the accuracy and delivery of the disclosures, as well as their content.

During the Small Business Review Panel process, several small entity representatives expressed concern about the unintended consequences that may result from applying the zero-percent tolerance rule currently under Regulation X to affiliates of the creditor or mortgage broker and to providers selected by the creditor,[200] and the Small Business Review Panel recommended that the Bureau consider alternatives that would increase the reliability of cost estimates while minimizing the impacts on small entities and solicit comment on the effectiveness of the current tolerance rules.[201]

Consistent with the Small Business Review Panel's recommendation, the Bureau solicited comment on all aspects of the proposal, including the cost, burden, and benefits to consumers and to industry regarding the proposed revisions to the good faith requirements, and whether the current tolerance rules have sufficiently improved the reliability of the estimates that creditors give consumers, while preserving creditors' flexibility to respond to unanticipated changes that occur during the loan process. The Bureau solicited comment on the frequency, magnitude, and causes of settlement cost increases. The Bureau also requested comment on any alternatives to the proposal that would further the purposes of TILA, RESPA, and the Dodd-Frank Act and provide consumers with more useful disclosures.

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[200] *See* Small Business Review Panel Report at 34, 37-38, 40, 64, 67, and 71.
[201] *Id.* at 29.

Comments

Consumer advocacy groups did not provide comments on the proposed application of the zero percent tolerance category of settlement costs to fees paid to affiliates of the creditor and fees paid to settlement service providers that creditors require consumers to use.[202] But the Bureau received numerous comments from industry commenters representing a wide range of segments of the mortgage origination industry on both the Bureau's rationale to expand the zero percent tolerance category of settlement costs to fees paid to lender affiliates and lender-required providers and the specific provisions of § 1026.19(e)(3). Provision-specific comments are addressed in the section-by-section analysis of each subsection of § 1026.19(e)(3), as applicable. This general section-by-section analysis of § 1026.19(e)(3) addresses comments received on the Bureau's rationale to expand the zero percent tolerance category of settlement costs to fees paid to lender affiliates and lender-required providers.

Industry commenters expressed mixed views on industry's ability to adapt to the change in the zero percent tolerance category of settlement charges, the impact of the change on competition and consumers, and alternatives. As discussed in more detail below, industry commenters questioned the Bureau's belief about the ability of creditors to accurately estimate the charges imposed by its affiliates and lender-required providers. Some commenters asserted that the Bureau was basing its proposal on anecdotal evidence, rather than systemic data. Commenters, including a large bank commenter, also questioned the Bureau's legal authority to establish a zero percent tolerance category for any settlement charge. They asserted that RESPA permits a creditor to provide consumers an estimate of settlement costs, rather than requiring a

[202] Two national consumer advocacy groups, however, provided comments on the aspect of the proposal that would have kept prepaid interest in the category of settlement costs not subject to tolerances at all. For a detailed discussion of this issue, see the section-by-section analysis of § 1026.19(e)(3)(iv) below.

creditor to disclose the exact amount of a settlement charge early in the loan origination process.

Compliance impact. Commenters expressed mixed views about the ability of industry to comply with the expansion of the zero percent tolerance category of settlement charges to include fees paid to lender affiliates and lender-required settlement service providers. A regional bank holding company stated that it supported the accuracy thresholds on the Loan Estimate, but that industry should be given at least 18 months to comply with the new rules.

Many industry commenters asserted that the proposed tolerance rules will be disruptive and costly because it would be difficult to estimate fees paid to lender-affiliates and lender-required service providers accurately early in the loan origination process. The SBA argued that the Bureau should maintain the current ten percent cushion for third-party charges because the small entities that participated in the Small Business Review Panel process stated that they were currently able to comply with HUD's 2008 RESPA Final Rule. A number of the commenters asserted that the current tolerance rules have largely solved the problem of large settlement cost increases at closing and that if the Bureau did not have evidence of widespread or systemic abuse of consumers, the Bureau should not change the current rules.

Industry commenters expressed concern about the impact of unforeseen circumstances that could change the cost estimates quoted on the original Loan Estimate, and about a creditor's ability to estimate affiliate fees and lender-required service provider fees. Some commenters suggested that unforeseen circumstances are especially likely to be an issue in rural areas where properties are often unique, title work frequently includes more variables, and appraisal costs vary because it is difficult to gather comparable sales data. Other commenters suggested that costs may be difficult to estimate initially if the creditor is working outside of the creditor's market and lacks familiarity with the prices charged by local settlement service providers.

Commenters also expressed concern that the original estimates could change because of overall market forces, such as market-based price fluctuations or a change in the availability of a lender-required service provider. A national provider of title insurance and settlement services asserted that even under well-defined vendor agreements for services such as providing an appraisal, obtaining a flood risk determination, or obtaining the consumer's credit report, fees may vary slightly from time to time. Some commenters, including industry trade associations representing banks and mortgage lenders, suggested that section 8 of RESPA, the statutory provision in RESPA that prohibits kickbacks, referral fees and similar considerations being exchanged in the context of referrals for settlement service business, is one of the reasons that explains why the creditor is unable to control settlement service fees.

Ability to estimate affiliates' fees. Several industry commenters, including mortgage lenders, a credit union, an industry trade association representing affiliated real estate businesses, and an industry association representing realtors, expressed support for the Bureau's rationale for including fees paid to affiliates in the zero percent tolerance category. They agreed that affiliated business relationships facilitate greater communication and coordination than a relationship between independent entities operating at arm's length. But other commenters expressed concern that unless the creditor-affiliate relationship is one based on actual control of the creditor over the affiliate, creditors do not control the affiliates' cost.

Ability to estimate fees of lender-required providers. Many commenters cited the lack of knowledge about a non-affiliated service provider's fees and control over the provider, as the primary reason they are concerned about expanding the zero percent tolerance category of settlement charges to include fees paid to lender-required providers. As noted above, some mortgage lenders, a credit union, and an industry trade association representing realtors supported the Bureau's rationale for including affiliate fees in the zero percent tolerance category. But they expressed concern that the same level of knowledge of and control over costs does not exist between creditors and unaffiliated service providers, even in situations where the creditor selects the unaffiliated service providers.

Competitive impact. Commenters also expressed mixed views about the competitive impact of the expansion of the zero percent tolerance category of settlement fees. An industry trade association representing independent land title agents and a title company commenter expressed support for the proposal's potential to encourage consumer shopping, and thereby increase competition. Some commenters, including the SBA and several industry trade associations representing banks and mortgage lenders expressed concerns that the proposed rule would increase affiliation and decrease competition, thereby harming small, independent settlement service providers.

But other commenters believed that there would be a decrease in affiliation. An industry trade association representing Federally-charted credit unions expressed concern that although the expansion may decrease affiliation, well-established settlement service providers, rather than small entities, will reap the benefits from de-affiliation, because creditors would be incented to seek services from established providers that can offer fee guarantees or provide reimbursements if tolerance thresholds are crossed. A Federal credit union commenter expressed concern that small creditors may be negatively impacted by the proposed rules because large creditors can use affiliation to control costs and provide accurate estimates, while small creditors would have to rely on unaffiliated settlement service providers that charge fees small creditors do not manage or control.

As noted above, several industry commenters supported the Bureau's rationale for the inclusion of fees paid to lender affiliates. But the commenters expressed concern about whether the change would lead to an unfair marketplace if only fees paid to lender-required affiliates were subject to the zero percent tolerance rule. The commenters asserted that the same tolerance rules should apply to affiliated and unaffiliated service providers equally.

Impact on consumers. The proposal's potential impact on consumers also generated mixed reactions from industry. One large bank commenter stated that imposing a zero percent tolerance rule when the consumer is not given a choice in selecting the service provider and the creditor has a degree of control over the provider is the right thing to do for the consumer. An industry trade association representing independent land title agents and a title company commenter supported expanding the zero percent tolerance category of fees to include fees paid to affiliates because they believed that it would encourage consumer shopping and promote consumer choice. The trade association commenter stated that it conducted a survey of its members and found that over half of the respondents thought that it was appropriate to subject affiliate fees to a zero percent tolerance on cost increases.

In joint comments, associations representing State consumer financial services regulators expressed support for the expansion. The commenters stated that applying the zero percent tolerance rule to fees of lender affiliates and lender-required service providers will ensure consumers are not subject to abusive practices that were prevalent in the past, and it will additionally incent creditors to provide consumers with accurate Loan Estimates and Closing Disclosures. The commenters stated that the proposal should lead to a healthier residential mortgage market because better informed consumers provided with accurate disclosures make better choices and are less likely to default, and creditors will have a less cumbersome and more certain process, reducing the risk of error and uncertainty associated with the disclosure process.

The commenters, however, stated that the tolerance thresholds should be adjusted if they cause closings to be delayed unnecessarily because industry has raised concerns about possible disruptions and inconveniences to consumers flowing from the combination of the Bureau's proposed changes to the tolerance rules and the timing requirement for delivery of the Loan Estimate.

Many industry commenters asserted that expanding the zero percent tolerance category of settlement costs to include fees paid to lender affiliates and lender-required service providers would harm consumers. They asserted that if creditors are held to a zero percent tolerance for fees paid to lender affiliates and lender-required nonaffiliated service providers, creditors may either increase their loan origination costs or quote higher third-party fees as a hedge against losses if the actual cost for a settlement service in the zero percent tolerance category charged at settlement is greater than the cost estimate disclosed on the Loan Estimate. A State housing finance agency expressed concern that overestimating third-party fees would harm consumers, because it would make the cost of the loan look higher than it actually is to consumers. An industry trade association representing community banks expressed concern that creditors may collude on prices with settlement service providers because the proposal creates pressure to disclose accurate cost estimates, and such collision would ultimately harm consumers.

As noted above, industry trade associations representing banks and mortgage lenders suggested creditors may increase affiliation to manage settlement costs. The commenters asserted this, in turn, may mean less credit availability for consumers because increased affiliation would raise the risk of creditors exceeding the points and fees thresholds for qualified mortgages under the Bureau's 2013 ATR Final Rule,[203] and for qualified residential mortgages under a credit risk retention proposal issued by other Federal regulators.[204] The SBA expressed concern that the negative impact of affiliation on small, independent service providers may harm consumers by decreasing competition.

Still other commenters, including the SBA and industry trade associations representing banks, argued that the proposed application of the zero percent category of settlement costs would cause an increase in the number of revised Loan Estimates being issued. They asserted that this, in turn, could increase consumer confusion, cause information overload, create closing delays, and increase the cost of obtaining a loan because creditors would pass the cost of producing the revised Loan Estimates to consumers.

Alternatives. Commenters presented a number of alternatives, including retaining the current tolerance rules. Several commenters suggested that the Bureau narrowly define the term "affiliate" so that the zero percent tolerance category of fees would only be expanded to include fees paid to affiliates in which the creditor has a majority ownership interest. As noted above, several commenters asserted that the Bureau should treat affiliated and unaffiliated settlement service providers equally. One such commenter suggested that the Bureau subject both affiliate provider fees and non-affiliated provider fees to a five percent tolerance on cost increases.

Still other industry commenters advocated for more fundamental changes. A number of mortgage lenders and mortgage broker commenters submitted similar comments asserting that the current tolerance rules generally caused consumer harm, and it would be better for mortgage

[203] 78 FR 6408 (Jan. 30, 2013).
[204] 76 FR 24090 (Apr. 29, 2011). On August 29, 2013, the agencies announced in a joint press release that a revised NPRM on the rule has been issued. *See e.g.*, Board of Governors of the Federal Reserve System, *et al.* Agencies revise proposed risk retention rule, available at http://www.federalreserve.gov/newsevents/press/bcreg/20130828a.htm (last accessed Aug. 29, 2013).

transactions to be subject to the rules that applied before HUD's 2008 RESPA Final Rule became effective. A national industry association representing mostly mortgage brokers stated that a materiality standard, which measures the amount of a cost increase against the loan amount, would be a better way to address limitations on settlement cost increases.

A State association representing escrow agents asserted that tolerance rules should only apply to loan costs. If a consumer must pay the same fee in a cash transaction, then the fee should not be subject to limitations on increases. Some commenters, including industry trade associations representing banks and mortgage lenders, requested that the Bureau permit fees in the zero percent tolerance category to increase so long as the aggregate amount of these fees do not increase. The commenters stated that the result would streamline the disclosures and consumers would not be harmed because the total amount the consumer pays would be the same.

Finally, industry trade associations representing banks and mortgage lenders asserted that the Bureau should consider whether to offer lenders an exemption from compliance with section 8 of RESPA so lenders could negotiate with third-party settlement service providers and offer consumers settlement service packages with guaranteed prices. The trade associations representing banks and mortgage lenders expressed the view that relief from section 8 liability is needed so creditors do not accidentally exceed the points and fees thresholds for qualified mortgages and qualified residential mortgages.

Final Rule

The Bureau has considered these comments, but is finalizing the proposed expansion of the current zero percent tolerance category of settlement costs to affiliate fees and fees of lender-required service providers. As discussed in greater detail below in the section-by-section analysis of § 1026.19(e)(3)(i), the final rule generally provides that any affiliate charge or charge of a lender-required provider paid by or imposed on the consumer that exceeds the amount for such charge estimated on the disclosures required by § 1026.19(e)(1)(i) is not in good faith, subject to legitimate cost revisions such as changed circumstances or borrower-requested changes.

As noted, several industry commenters expressed support for the Bureau's rationale to expand the zero percent tolerance category of settlement costs to fees of lender affiliates. The Bureau also does not believe that expanding the zero percent tolerance category will negatively impact credit availability. As previously noted, some industry trade associations suggested creditors may increase affiliation to manage settlement costs. The commenters asserted this, in turn, may mean less credit availability for consumers, because increased affiliation increase the risk that mortgages would not be able to be qualified mortgages or qualified residential mortgages because creditors would exceed the points and fees thresholds. Also as noted above, some commenters suggested that providing industry with relief from RESPA section 8 liability would be an effective way to solve the problem, because creditors and settlement service providers could agree on prices in advance and avoid exceeding the points and fees threshold.

The Bureau believes that the substantial communication that already exists between creditors and their affiliates would enable creditors to determine, early in the mortgage origination process, whether a loan would exceed the points and fees threshold tests. Accordingly, the Bureau is not persuaded that the proposal would negatively impact credit availability. The Bureau also believes that the presence of this points and fees threshold may incent creditors to strengthen the already-substantial communication with their affiliates to obtain affiliate cost information with greater accuracy early in the process, which would, in turn, facilitate compliance with the final rule. In addition, the Bureau does not have information that the lack of such an exemption has had any detrimental effect on creditors' ability to comply with the current tolerance rules under Regulation X.

Further, there is a longstanding debate about whether RESPA section 8 liability casts a shadow over creditors and settlement service providers such that it hinders the ability of creditors to comply with tighter tolerances for settlement charges. As noted above, some industry trade associations suggested that creditors and settlement service providers should be provided with relief from section 8 liability if they could guarantee the prices of certain settlement services. HUD proposed a similar solution in 2002,[205] and a strong backlash from independent settlement service providers and consumer advocacy groups ensued.[206]

Additionally, the Bureau believes that if a creditor denies consumers the opportunity to influence the quality or cost of settlement services through shopping by requiring consumers to use lender-selected settlement service providers, then the creditor should take responsibility for making accurate estimations and assuming the risk of under-estimation. As noted above, one large national provider of title insurance and settlement services stated that creditors enter into "well-defined" vendor agreements with lender-required service providers. The Bureau believes that the existence of such agreements supports the Bureau's rationale that creditors are in a superior position of knowledge with respect to the expected costs of the services of lender-required providers. The Bureau acknowledges that unforeseen circumstances and market forces could render estimates of settlement services inaccurate. To the extent that the variation is due to a changed circumstance or borrower-requested change, the final rule permits a creditor to revise the cost estimate it originally provided to the consumer. The Bureau recognizes that the ten

[205] 67 FR 49134 (Jul. 29, 2002).
[206] 73 FR 14030, 14032 (Mar. 14, 2008).

percent cushion could help creditors and settlement service providers manage the risk of price fluctuations associated with market forces. But the Bureau believes creditors' ability to obtain information about their affiliate's or preferred provider's pricing means that creditors do not need the ten percent cushion under the current tolerance rules to manage such risk, because the final rule permits revisions based on legitimate changed circumstances and borrower-requested changes.

With respect to the concerns expressed by some commenters about the competitive consequences of applying the zero percent tolerance category to affiliate fees and fees paid to lender-required service providers, the Bureau does not believe that this final rule will threaten competition by pushing small, independent settlement service providers out of business. The Bureau believes that this final rule may actually enhance competition in the market for settlement service providers. If a creditor does not want the zero percent tolerance rule to apply to the cost of a lender-required service, a creditor must permit the consumer to select the settlement service provider for that service, and the service provider cannot be an affiliate of the creditor. Further, if the creditor permits a consumer to select the settlement service provider, the creditor must provide the consumer with a written list identifying available providers, which as illustrated in the model written list the Bureau is finalizing in this final rule as form H-27 of appendix H to Regulation Z, would expressly disclose to the consumer that the consumer may choose a different settlement service provider. The Bureau believes that these provisions would promote consumer shopping and competition among settlement service providers.

The Bureau also believes that the structural flaws in HUD's 2008 RESPA Final Rule the Bureau identified in the proposal and described in this section-by-section analysis justify the Bureau taking this action in this final rule, even though the Bureau's empirical support rests on anecdotal evidence, rather than systemic data, because of the significant harm that can result from increased closing costs to consumers. Further, with respect to the argument that RESPA permits a creditor to provide consumers with an estimate of settlement costs, rather than requiring a creditor to disclose the exact amount of a settlement charge early in the loan origination process, the Bureau observes that the final rule incorporates the current tolerance rules' exceptions (*i.e.*, the amount of settlement charges subject to the zero percent tolerance category, as well as the ten percent tolerance category, may change due to events such as changed circumstances and borrower-requested changes).

With respect to the argument that an unintended consequence of the Bureau's proposal would be that creditors would increase their origination charges to compensate for increased costs due to settlement charges exceeding the expanded zero percent tolerance category of settlement costs, the Bureau doubts that creditors will, in fact, incur such increased costs for the reasons already discussed and also believes that competition among creditors should be an effective countervailing force to prevent creditors using affiliates from charging higher interest rates on their loans. The Bureau also doubts that the final rule will pressure creditors and settlement service providers to collude on prices or to limit business relationships to ones with established settlement service providers that can offer price guarantees or provide reimbursements if tolerance thresholds are crossed. The Bureau believes that current restrictions under section 8 of RESPA on kickbacks, referral fees, and similar considerations should deter such behavior.

Some commenters expressed concern that creditors would have to issue more revised Loan Estimates, and the Bureau acknowledges that this is a possibility. However, the Bureau believes that this result is adequately counter-balanced by the benefits that will flow to consumers from receiving more accurate cost estimates and better enabling consumer shopping. The Bureau believes that adopting the proposal would mean that consumers would have more certainty about their settlement costs early in the loan process, which can enhance the ability of consumers to shop among creditors. The Bureau does not believe that expanding the zero percent tolerance category as proposed would delay closings, which concerned some commenters, because as noted above, creditors would be able to revise cost estimates subject to a tolerance in the event of a changed circumstance or borrower-requested change. In addition, as discussed in greater detail below in the section-by-section analysis of § 1026.19(e)(4), this final rule does not prohibit disclosing revised costs that have changed due to a changed circumstance or borrower-requested change on the Closing Disclosure provided under § 1026.19(f)(1)(i).

The Bureau does not believe that the final rule must be adjusted to subject all affiliated and unaffiliated businesses to a zero percent tolerance because it does not believe that this final rule will treat affiliated businesses unfairly. As discussed above, the application of the zero percent tolerance category of settlement charges to affiliated settlement service providers and lender-required unaffiliated settlement service providers is based on the premise that in both cases, creditors that use affiliates or unaffiliated providers they require are in a superior position of knowledge with respect to the expected costs of the services of those providers and can provide more accurate disclosures than they are with respect to the expected costs of services of unaffiliated and non-required providers. It is not based merely on the premise that creditors should be able to estimate more accurately all settlement charges. Additionally, because the Bureau's justification is not primarily based on the existence of actual control, the Bureau does not believe that "affiliates" should be defined to include only entities in which the creditor holds a majority ownership interest.

The Bureau also does not believe that fundamental changes must be made to the current tolerances framework on charges for settlement services. As noted above, the current tolerance rules resulted from HUD's ten-year-long investigation of problems in the settlement services industry. For reasons discussed above, the Bureau believes that it is reasonable to expect creditors to estimate affiliate fees and fees paid to service providers required by the creditors as if they were estimating their own fees. In addition, such accurate estimates will benefit consumers because accurate estimates will enable consumers to make more informed comparisons among different loans, thus facilitating shopping. Therefore, the Bureau does not believe it is appropriate to permit fees in the zero percent tolerance category to increase so long as the aggregate amount of these fees does not increase. Further, for the same reasons, the Bureau does not believe other alternative fundamental changes raised in the comments, such as setting limitations on cost increases based on the materiality of the change, changing the zero percent tolerance rule to a five percent tolerance rule, or limiting the application of the tolerance rules to loan costs, are appropriate.

Legal authority. The Bureau is adopting in this final rule the expansion of the zero percent tolerance category generally as proposed, with the modifications described below, pursuant to its authority to prescribe standards for "good faith estimates" under TILA section 128 and RESPA section 5, as well as its general rulemaking, exception, and exemption authorities under TILA sections 105(a) and 121(d), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act and section 129B(e) of TILA.

For the reasons discussed above, the Bureau believes that expanding the zero percent tolerance category of settlement charges to include affiliate charges and charges of lender-required service providers is consistent with TILA's purpose in that it will ensure that the cost estimates are more meaningful and better inform consumers of the actual costs associated with obtaining credit. The Bureau also believes that this final rule will effectuate the statute's goals by ensuring more reliable estimates, which will increase the level of shopping for mortgage loans and foster honest competition for prospective consumers among financial institutions. The Bureau further believes that this final rule will prevent potential circumvention or evasion of TILA by penalizing underestimation to gain a competitive advantage in situations where TILA requires good faith.

As noted above, section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute. The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d) and, based on that review and for reasons discussed above, the Bureau believes that the tolerance categories adopted in this final rule are appropriate, will facilitate compliance with the statute by providing bright-line rules for the determination of "good faith" based on the knowledge of costs that creditors have, or reasonably should have, and prevent misleading disclosures. Additionally, the Bureau believes that the final rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b), because providing consumers with more accurate estimates of the costs of the mortgage loan transaction will improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure. Section 129B(e) of TILA generally authorizes the Bureau to adopt regulations prohibiting or conditioning terms, acts, or practices relating to residential mortgage loans that are not in the interest of the borrower. The Bureau has considered the purposes for which it may exercise its authority under TILA section 129B(e). Based on that review and for reasons discussed above, the Bureau believes that the regulations are appropriate because unreliable estimates are not in the interest of the borrower.

Section 19(a) of RESPA authorizes the Bureau to prescribe regulations and make interpretations to carry out the purposes of RESPA, which include more effective advance disclosure of settlement costs. The Bureau has considered the purposes for which it may exercise its authority under RESPA section 19(a). Based on that review and for reasons discussed above, the Bureau believes that the final rule is appropriate. It will ensure more effective advance disclosure of settlement costs by requiring creditors to disclose accurate estimates when such creditors are in a position to do so. Contrary to assertions made by certain commenters about the Bureau's authority to impose zero percent tolerance on any settlement charge, the Bureau's authority is broad and, as noted above, resides in a number of statutes.

19(e)(3)(i) General Rule

As discussed above, Regulation X currently provides that the amounts imposed for certain settlement services and transfer taxes may not exceed the amounts included on the RESPA GFE, unless certain exceptions are met. The items included under this category are generally limited to charges paid to creditors and brokers, in addition to transfer taxes. The Bureau proposed to incorporate the zero percent tolerance rule in Regulation X in proposed § 1026.19(e)(3)(i). Further, as discussed above in the general section-by-section analysis of § 1026.19(e)(3), the Bureau proposed to expand the scope of the zero percent tolerance category to include fees paid to affiliates and lender-required service providers. Legitimate cost revisions when an unexpected event occurs, such as a changed circumstance or a change requested by the consumer, would permit fees subject to the zero percent tolerance to increase from their initial estimates.

Proposed § 1026.19(e)(3)(i) would have provided that the charges paid by or imposed on the consumer may not exceed the estimated amounts of those charges required to be disclosed under § 1026.19(e)(1)(i), subject to permissible reasons for revision provided in § 1026.19(e)(3)(iv), and except as otherwise provided under § 1026.19(e)(3)(ii) and (iii). Proposed comment 19(e)(3)(i)-1 would have explained that § 1026.19(e)(3)(i) imposes the general rule that an estimated charge disclosed pursuant to § 1026.19(e) is not in good faith if the charge paid by or imposed on the consumer exceeds the amount originally disclosed. Although proposed § 1026.19(e)(3)(ii) and (e)(3)(iii) would have provided exceptions to the general rule for certain types of charges, the comment would have explained that those exceptions generally would not apply to: (1) fees paid to the creditor; (2) fees paid to a broker; (3) fees paid to an affiliate of the creditor or a broker; (4) fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop for a third party service provider; and (5) transfer taxes.

Proposed comment 19(e)(3)(i)-2 would have provided guidance on the issue of whether an item is "paid to" a particular person. In the mortgage loan origination process, individuals often receive payments for services and subsequently pass those payments on to others. Similarly, individuals often pay for services in advance of the real estate closing and subsequently seek reimbursement from the consumer. This proposed comment would have clarified that fees are not considered "paid to" a person if the person does not retain the funds and would have provided examples. Proposed comment 19(e)(3)(i)-3 referred to other provisions addressing the distinction between transfer taxes and recording fees.

Proposed comment 19(e)(3)(i)-4 would have provided examples illustrating the good faith requirement in the context of specific credits, rebates, or reimbursements. The proposed comment would have clarified that an item identified, on the disclosures provided pursuant to § 1026.19(e), as a payment from a creditor to the consumer to pay for a particular fee, such as a credit, rebate, or reimbursement would not be subject to the good faith determination requirements in § 1026.19(e)(3)(i) or (ii) if the increased specific credit, rebate, or reimbursement actually reduced the cost to the consumer. The proposed comment would have further clarified that specific credits, rebates, or reimbursements could not be disclosed or revised in a way that would otherwise violate the requirements of § 1026.19(e)(3)(i) and (ii). The proposed comment would have illustrated these requirements with examples.

Proposed comment 19(e)(3)(i)-5 would have clarified how to determine "good faith" in the context of lender credits. The proposed comment would have explained that the disclosure of "lender credits," as identified in § 1026.37(g)(6)(ii), is required by § 1026.19(e)(1)(i). The proposed comment would have also explained that lender credits are payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to § 1026.19(e)(1)(i). The proposed comment would have further clarified that these non-specific credits are negative charges to the consumer – as the lender credit decreases the overall cost to the consumer increases. Thus, under the proposal an actual lender credit provided at the real estate closing that is less than the estimated lender credit provided pursuant to § 1026.19(e)(1)(i) would have been an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). The proposed comments would have illustrated these requirements with examples. The proposed comment would have also included a reference to § 1026.19(e)(3)(iv)(D) and comment 19(e)(3)(iv)(D)-1 for a discussion of lender credits in the context of interest rate dependent charges.

Comments

The Bureau received a number of comments on its proposal to incorporate aspects of the current zero percent tolerance under Regulation X in this final rule. The comments addressed the Bureau's proposal to keep transfer taxes in the settlement costs subject to the zero percent tolerance category, the treatment of "no cost" loans, the treatment of lender credits and specific credits, and the definition of "affiliate."

A number of industry commenters asserted that transfer taxes should not be subject to a zero percent tolerance. The commenters included industry trade associations representing banks and mortgage lenders, individual large banks, community banks, mortgage lenders, mortgage brokers, a rural creditor, and settlement and title agents. The commenters asserted that transfer taxes are neither paid to, nor set by, the creditor. The commenters asserted that the amounts charged for transfer taxes vary among different State and local jurisdictions, provisions of the real estate purchase and sale contract, and transaction-specific factors, like changes in the loan amount, and locality-specific factors, such as local law or custom that determines if the seller or consumer is ultimately responsible for paying the transfer tax.

Some industry commenters, including industry trade associations representing banks and mortgage lenders, asserted that "no cost" loans should not be subject to tolerance rules because the creditor finances the consumer's closing costs. Industry commenters also expressed confusion about the treatment of lender and specific credits. They sought various clarifications about specific credits, including how to determine when a creditor has committed a tolerance violation regarding specific credits, how to disclose these credits on the Loan Estimate, and whether changed circumstances would apply to lender credits and specific credits.

A State manufactured housing trade association sought an exemption that would permit creditors to decrease the amount of lender credits actually provided to the consumer at closing without causing a tolerance violation in transactions subject to the Federal Housing Administration’s streamlined refinancing program and other similar programs. The trade association commenter explained that the program guidelines limit the amount of cash a creditor can pay to the consumer at closing. Accordingly, the creditor may need to reduce the amount of the actual lender credit at the real estate closing to remain in compliance with program guidelines. The trade association commenter stated that if the reduction was considered a tolerance violation, creditors may respond by reducing the number of rate lock offers on these transactions.

Some commenters, including an individual title company commenter, suggested that the Bureau define the term “affiliate.” Lastly, the Bureau received requests from some title company commenters that sought an exemption from the proposed general rule with respect to the treatment of payments that affiliated title companies receive at closing that are disbursed to service providers not affiliated with the lender as payment for services performed by the unaffiliated service providers on behalf of the affiliated title companies.

Final Rule

The Bureau has considered the comments, and is adopting § 1026.19(e)(3)(i) substantially as proposed. Section 1026.19(e)(3)(i) provides that an estimated closing cost disclosed pursuant to § 1026.19(e) is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed under § 1026.19(e)(1)(i), subject to permissible reasons for revision permitted under § 1026.19(e)(3)(iv), such as a changed circumstance or a borrower-requested change, and except as otherwise provided under § 1026.19(e)(3)(ii) and (iii).

The adoption of the final rule means that for purposes of conducting the good faith analysis, the creditor compares the actual charge paid by or imposed on the consumer to the estimated amount disclosed in the original Loan Estimate. If the originally estimated amount changed due to one of the valid reasons for revision set forth in this final rule, *e.g.*, a changed circumstance or borrower-requested change, the creditor may compare the actual charge paid by or imposed on the consumer with the revised estimated amount, provided that the creditor provides the revised amount pursuant to the redisclosure requirements in this final rule, discussed in greater detail below in the section-by-section analysis of § 1026.19(e)(4). The Bureau has adjusted the text of § 1026.19(e)(3)(i) to harmonize the regulatory text with the related commentary.

Comment 19(e)(3)(i)-1 is adopted substantially as proposed, with minor changes to enhance clarity. The Bureau has added a new comment 19(e)(3)(i)-2 to explain that for purposes of § 1026.19(e), a charge "paid by or imposed on the consumer" refers to the final amount for the charge paid by or imposed on the consumer at consummation or settlement, whichever is later. As discussed in greater detail in the section-by-section discussion of § 1026.19(f)(1)(ii), some industry commenters expressed concern about the ability of creditors to determine the final cost for certain settlement services three business days before consummation, because in some jurisdictions, settlement does not occur until after consummation, and costs could change between consummation and settlement. The Bureau understands that recording fees, which are subject to the ten percent tolerance category, are an example of such costs that could change between consummation and settlement.

The Bureau is concerned that by not clarifying what a charge "paid by or imposed upon the consumer" means, the proposed rule would not have adequately accounted for changes in actual closing costs in jurisdictions where consummation and settlement occur at different times, which in turn, could complicate the creditor's good faith analysis under § 1026.19(e)(3)(i) and (ii). Accordingly, the Bureau believes that compliance will be facilitated if the Bureau clarifies that for purposes of § 1026.19(e)(3), a charge "paid by or imposed on the consumer" refers to the final amount for the charge paid by or imposed on the consumer at consummation or settlement, whichever is later. The comment further explains that "consummation" is defined in § 1026.2(a)(13), and that "settlement" is defined in Regulation X, 12 CFR 1024.2(b). The Bureau notes that current Regulation Z refers to "settlement" with respect to the determination of whether a finance charge is a prepaid finance charge under § 1026.2(a)(23) (see comment 2(a)(23)-2.ii) and the timing of corrected disclosures for transactions secured by a consumer's interest in a timeshare plan under § 1026.19(a)(5)(iii) (see comment 19(a)(5)(iii)-1). Comment 19(e)(3)(i)-2 also provides illustrative examples. The Bureau further notes that final § 1026.19(f)(2)(iii) generally requires the creditor to provide a revised Closing Disclosure after consummation if the Closing Disclosures provided pursuant to § 1026.19(f)(1)(i) becomes inaccurate after consummation.

The Bureau is making a modification to proposed comment 19(e)(3)(i)-2, renumbered as comment 19(e)(3)(i)-3, to facilitate compliance. Proposed comment 19(e)(3)(i)-2 did not include an illustration of whether transfer taxes and recording fees are considered "paid to" the creditor for purposes of § 1026.19(e). As adopted, comment 19(e)(3)(i)-2 provides such an illustration. The Bureau is finalizing proposed comment 19(e)(3)(i)-3, renumbered as comment 19(e)(3)(i)-4, substantially as proposed to streamline the references to commentary to § 1026.37(g)(1) that discuss the differences between transfer taxes and recording fees.

The Bureau is not finalizing proposed comments 19(e)(3)(i)-4 and -5 on the treatment of lender credits and specific credits in consideration of the comments received. Instead, the

Bureau is adopting new comment 19(e)(3)(i)-5 to clarify that the final rule is incorporating the guidance on lender credits under current Regulation X. The Bureau acknowledges industry's concern that the Loan Estimate does not permit lender credits and specific credits to be separately disclosed. But under current Regulation X, lender credits and specific credits are not separately disclosed on the RESPA GFE. Accordingly, the Bureau believes that maintaining the status quo on the treatment of lender credits and specific credits will reduce industry confusion and facilitate implementation of this final rule.

New comment 19(e)(3)(i)-5 explains that the disclosure of "lender credits," as identified in § 1026.37(g)(6)(ii), is required by § 1026.19(e)(1)(i), and that "lender credits," as identified in § 1026.37(g)(6)(ii), represents the sum of non-specific lender credits and specific lender credits. Non-specific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee. Specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. Non-specific lender credits and specific lender credits are negative charges to the consumer. The actual total amount of lender credits, whether specific or non-specific, provided by the creditor that is less than the estimated "lender credits" identified in § 1026.37(g)(6)(ii) and disclosed pursuant to § 1026.19(e) is an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). Comment 19(e)(3)(i)-5 also provides illustrations of these requirements. The comment also references § 1026.19(e)(3)(iv)(D) and comment 19(e)(3)(iv)(D)-1 for a discussion of lender credits in the context of interest rate dependent charges. With respect to whether a changed circumstance or borrower-requested change can apply to the revision of lender credits, the Bureau believes that a changed circumstance or borrower-requested change can decrease such credits, provided that all of the requirements of

§ 1026.19(e)(3)(iv), discussed below, are satisfied.

The Bureau is also adding new comment 19(e)(3)(i)-6 to provide guidance on how to perform the good faith analysis required by § 1026.19(e)(3)(i) with respect to lender credits. New comment 19(e)(3)(i)-6 explains that for purposes of conducting the good faith analysis required under § 1026.19(e)(3)(i) for lender credits, the total amount of lender credits, whether specific or non-specific, actually provided to the consumer is compared to the amount of "lender credits" identified in § 1026.37(g)(6)(ii). The comment also explains that the total amount of lender credits actually provided to the consumer for purposes of the good faith analysis is determined by aggregating the amount of the "lender credits" identified in § 1026.38(h)(3) with the amounts paid by the creditor that are attributable to a specific loan cost or other cost, disclosed pursuant to § 1026.38(f) and (g). As clarified in final comment 19(e)(3)(i)-6, a creditor uses the actual total amount of lender credits, whether specific or non-specific, for purposes of the good faith analysis under § 1026.19(e)(3)(i).

However, with respect to the request that the Bureau provide a specific exemption that would allow the amount of lender credits to decrease so that the creditor would be able to stay within guidelines under streamlined refinancing programs that limit the amount of cash that the creditor could pay the consumer at closing, the Bureau declines. Lenders are not permitted to reduce the lender credits they provide to the borrower under current Regulation X. *See* HUD RESPA FAQs p. 27, # 4 ("GFE – Block 2"). Under current Regulation X, the loan originator may only apply the amount of the excess lender credits to additional closing costs previously not anticipated to be included in the loan, apply the excess to a principal reduction to the outstanding balance of the loan, pay the consumer the excess in cash, or reduce the interest rate and the credit accordingly. Creditors will be able to take the same actions with respect to lender creditors in streamlined refinancing programs under this final rule.

The Bureau is also adding commentary to § 1026.19(e)(3)(i) to address a comment the Bureau received from a document preparation company about the proposed requirements set forth in proposed § 1026.37(o)(4) and § 1026.38(t)(4) to disclose rounded numbers for certain charges on the Loan Estimate and Closing Disclosure. The commenter requested guidance on how numbers required to be rounded on the Loan Estimate pursuant to §§ 1026.37(o)(4) and 1026.38(t)(4) would be compared to the Closing Disclosure for the purposes of the tolerances provided in § 1026.19(f)(1). New comment 19(e)(3)(i)-7 explains that although §§ 1026.37(o)(4) and 1026.38(t)(4) require that the dollar amounts of certain charges disclosed on the Loan Estimate and Closing Disclosure, respectively, be rounded to the nearest whole dollar, to conduct the good faith analysis under § 1026.19(e)(3)(i) and (ii), the creditor should use unrounded numbers to compare the actual charge paid by or imposed on the consumer for a settlement service with the estimated cost of the service.

The Bureau does not believe that it would be appropriate to exempt "no cost" loans from § 1026.19(e)(3)(i). "No cost" loans must comply with the current limitations on settlement charge increases set forth in Regulation X. Additionally, the text of § 1026.19(e)(3)(i) indicates that the general rule applies to both charges that are paid by the consumer, and charges that are imposed on the consumer. In a "no cost" loan transaction, closing costs may not be paid by the consumer because they are financed by the creditor, but are nonetheless imposed on the consumer. The Bureau also believes that consumers should receive reliable cost estimates for "no cost" loans so the consumer could use the Loan Estimate to compare such loans, where the closing costs are financed, with loans that do not finance closing costs.

The Bureau also declines to modify the rule to provide an exemption for payments that affiliated title companies receive at closing that are then disbursed to unaffiliated service providers as payment for services performed by the unaffiliated service providers on behalf of the affiliated title companies. If a lender requires a consumer to use an affiliated company for title services, then the fees the consumer pays to the affiliate company should be subject to zero percent tolerance, even if the affiliate uses vendors to perform the title services.

The Bureau has also considered the comments about the application of the zero percent tolerance rule to transfer taxes. The Bureau believes that a creditor should be able to obtain information about transfer taxes with considerable precision based on its knowledge of the real estate settlement process and resources it has available, such as software that permits a creditor to estimate transfer taxes with considerable precision, even though it is originating a loan in a geographical area with which it is unfamiliar. In addition, the amount of transfer taxes could be obtained through other sources, such as directly from the government authority of the jurisdiction where the transaction is taking place. Further, because the final rule reflects the current rule, the Bureau believes that creditors have already adapted to this requirement. Further, the adoption of § 1026.19(e)(3)(iv) in this final rule, as discussed below, offers a level of flexibility for the creditor to make adjustments to its estimate for transfer taxes similar to the current rule under Regulation X if the amount of transfer taxes increases because of a changed circumstance or borrower-requested change. Lastly, as noted above, the Bureau has added a comment to § 1026.19(e) to define "affiliate" for purposes of § 1026.19(e) by explaining that it has the same meaning as in § 1026.32(b)(2) in current subpart E of Regulation Z.[207]

19(e)(3)(ii) Limited Increases Permitted for Certain Charges

[207] Current § 1026.32(b)(2), which sets the definition of "affiliate" in subpart E of Regulation Z, will be renumbered as § 1026.32(b)(5) when the Bureau's 2013 ATR Final Rule becomes effective on January 10, 2014.

Proposed § 1026.19(e)(3)(ii) would have permitted the sum of recording fees and all charges for non-affiliated third-party services for which the creditor permits the consumer to shop for a provider other than those identified by the creditor, to increase by ten percent for the purposes of determining good faith. Proposed comment 19(e)(3)(ii)-1 would have explained that § 1026.19(e)(3)(ii) provides that certain estimated charges are in good faith if the sum of all such charges paid by or imposed on the consumer does not exceed the sum of all such charges disclosed pursuant to § 1026.19(e) by more than ten percent. The proposed comment would also have explained that § 1026.19(e)(3)(ii) permits this limited increase for only: (1) fees paid to an unaffiliated third party if the creditor permitted the consumer to shop for the service, consistent with § 1026.19(e)(1)(vi)(A); and (2) recording fees.

Proposed comment 19(e)(3)(ii)-2 would have clarified that pursuant to § 1026.19(e)(3)(ii), whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to § 1026.19(e)(3)(ii) increase by more than ten percent, even if a particular charge does not increase by more than ten percent. The proposed comment would have also clarified that § 1026.19(e)(3)(ii) provides flexibility in disclosing individual fees by focusing on aggregate amounts, and would have provided illustrative examples. Proposed comment 19(e)(3)(ii)-3 would have discussed the determination of good faith when a consumer is permitted to shop for a settlement service, but either does not select a settlement service provider, or chooses a settlement service provider identified by the creditor on the list required by § 1026.19(e)(1)(vi)(C). The proposed comment would have explained that § 1026.19(e)(3)(ii) provides that if the creditor requires a service in connection with the mortgage loan transaction, and permits the consumer to shop, then good faith is determined pursuant to § 1026.19(e)(3)(ii)(A), instead of § 1026.19(e)(3)(i) and subject to the other requirements in § 1026.19(e)(3)(ii)(B) and (C). The proposed comment also would have illustrated the requirement with examples.

Proposed comment 19(e)(3)(ii)-4 would have discussed how the good faith determination requirements apply to recording fees. The proposed comment would have explained that the condition specified in § 1026.19(e)(3)(ii)(B), that the charge not be paid to an affiliate of the creditor, is inapplicable in the context of recording fees. The proposed comment would have also explained that the condition specified in § 1026.19(e)(3)(ii)(C), that the creditor permits the consumer to shop for the service, is similarly inapplicable. Therefore, the proposed comment would have stated that estimates of recording fees would only have needed to satisfy the condition specified in § 1026.19(e)(3)(ii)(A) (*i.e.*, that the aggregate amount increased by no more than ten percent) to be subject to the requirements of § 1026.19(e)(3)(ii).

Comments

Commenters expressed concern that fees subject to the ten percent tolerance would be restricted to fees paid to non-affiliates for services for which creditors permit consumers to shop. A number of commenters opposed the Bureau's proposal to keep recording fees in the ten percent tolerance category. A number of commenters sought various clarifications of proposed § 1026.19(e)(3)(ii).

An industry trade association representing mortgage lenders asserted that whether a consumer is able to shop beyond the written list of providers for a settlement service should not be a condition that determines whether the ten percent tolerance applies to a fee charged by a settlement service provider. An industry trade association representing banks asserted that the ten percent tolerance rule should apply to lender-required service providers and that no tolerance rules should apply to fees paid to settlement service providers selected by the consumer without, or regardless of, a creditor's recommendation because the creditor has no knowledge of or control over the pricing set by such providers.

The commenters opposing the application of the ten percent tolerance to recording fees included commenters that opposed the application of the zero percent tolerance to transfer taxes, and many based their opposition on similar arguments they made for transfer taxes. A large bank commenter observed that recording fees can increase shortly before, or even at, closing. A settlement agent commenter suggested that applying the ten percent tolerance rule to recording charges will delay closings and harm consumers. But a law firm employee commenter from a State that requires attorneys to conduct real estate closings suggested that the ten percent tolerance rule would not negatively impact the timeliness of closings.

Industry trade association commenters representing banks and mortgage lenders observed that, in some cases, the creditor may disclose an amount for a settlement service on the original Loan Estimate but later on, the service is no longer required, due to unexpected events. The commenters asserted that the final rule should clarify that the estimated amount for that settlement service disclosed on the Loan Estimate be included in the sum of all estimated amounts for charges subject to § 1026.19(e)(3)(ii) for purposes of the good faith analysis under § 1026.19(e)(3)(ii), because the creditor could not have predicted the occurrence of the event that resulted in the nonperformance of a lender-required service.

A large bank commenter requested the Bureau confirm that the ten percent tolerance applies where the creditor permits the consumer to shop for a settlement service, but the consumer still asks the creditor to select the settlement service provider. The large bank commenter also requested clarification on what tolerance rule applies when the consumer asks the creditor to select the settlement service provider, even though the creditor permits the consumer to shop pursuant to § 1026.19(e)(1)(iv)(A), and the creditor selects a non-affiliate that the creditor did not disclose to the consumer on the list required by § 1026.19(e)(1)(iv)(C).

Final Rule

The Bureau has considered the comments and is adopting § 1026.19(e)(3)(ii) with minor revisions to enhance clarity. Section 1026.19(e)(3)(ii) provides that an estimate of a charge for a third-party service performed by an unaffiliated settlement service provider or a recording fee is in good faith if the aggregate amount of such charges paid by or imposed on the consumer does not exceed the aggregate amount of such charges disclosed under § 1026.19(e)(1)(i) by more than 10 percent, provided that the creditor permits the consumer to shop for the third-party service, consistent with § 1026.19(e)(1)(vi). Comments 19(e)(3)(ii)-1 through -4 are adopted substantially as proposed.

With respect to applying the ten percent tolerance rule to fees paid to service providers recommended by the creditor, the Bureau believes there needs to be a determination, pursuant to § 1026.19(e)(3)(ii), whether the fee is paid to an unaffiliated third party and whether the creditor permitted the consumer to shop for the service. The Bureau recognizes that some consumers may ask their creditor or mortgage broker for recommendations when selecting settlement service providers; however, the Bureau is concerned that some creditors and mortgage brokers may try to require the consumer to select certain providers while appearing to permit the consumer to shop for a provider. If the creditor or mortgage broker engages in this practice, the Bureau believes that it may raise similar consumer protection issues associated with creditors developing "closed lists" of "preferred providers," discussed above in the general section-by-section analysis of § 1026.19(e)(3).

The Bureau declines to incorporate in final § 1026.19(e)(3)(ii) some commenters' suggestion that the estimated amount of a settlement service be included in the amount of charges used to conduct the good faith analysis required by § 1026.19(e)(3)(ii), even when the service was not performed. Current Regulation X provides that if a service that was listed on the RESPA GFE was not obtained in connection with the transaction, then no amount for that service should be reflected on the RESPA settlement statement, and the estimated amount for that charge on the RESPA GFE should not be included in any amount used to determine whether a tolerance violation has occurred. 12 CFR part 1024, app. C. HUD explained that the reason for adopting this rule is that allowing loan originators to include in the good faith analysis charges from the RESPA GFE for settlement services that were not purchased could both induce loan originators to discourage consumers from purchasing settlement services in order to increase the cushion they have under the ten percent tolerance rule and to disclose on the RESPA GFE services that the consumer will not need in the transaction. 76 FR 40612, 40614 (July 11, 2011). The final rule largely mirrors these requirements in that if the creditor discloses a cost estimate for a settlement service on the Loan Estimate, but the settlement service was not obtained, the creditor cannot include the fee estimate in the estimated aggregate amount for purposes of conducting the good faith analysis under § 1026.19(e)(3)(ii). To facilitate compliance, the Bureau is adopting new comment 19(e)(3)(ii)-5. Comment 19(e)(3)(ii)-5 explains that in calculating the aggregate amount of estimated charges for purposes of conducting the good faith analysis pursuant to § 1026.19(e)(3)(ii), the aggregate amount of estimated charges must reflect charges for services that are actually performed, and provides an illustrative example. The Bureau believes that the ten percent tolerance rule should continue to apply to recording fees. Because this is the current rule under Regulation X, the Bureau believes that creditors have already adapted. The comments also suggested that there was a concern that because recording fees can increase shortly before closing, closing can be delayed if a revised Loan Estimate must be provided. But pursuant to § 1026.19(e)(4)(ii), discussed below, a creditor complies with § 1026.19(e)(4) by listing the revised recording fee in the Closing Disclosure.

19(e)(3)(iii) Variations Permitted for Certain Charges

Section 1024.7(e)(3) of Regulation X currently provides that the amounts charged for services other than those identified in § 1024.7(e)(1) and § 1024.7(e)(2) may change at settlement. The Bureau proposed § 1026.19(e)(3)(iii), which would have provided that estimates of the following charges are in good faith regardless of whether the amount actually paid by the consumer exceeds the estimated amount disclosed, provided such estimates are consistent with the best information reasonably available to the creditor at the time the disclosures were made: prepaid interest; property insurance premiums; amounts placed into an escrow, impound, reserve, or similar account; and charges paid to third-party service providers selected by the consumer consistent with § 1026.19(e)(1)(vi)(A) that are not on the list provided pursuant to § 1026.19(e)(1)(vi)(C). The Bureau reasoned that: (1) certain types of estimates, such as those for property insurance premiums, may change significantly after the original disclosures required under § 1026.19(e)(1)(i) are provided; and (2) the existing Regulation X rule would be improved and compliance facilitated by specifically identifying which items are included in this category.

Proposed comments 19(e)(3)(iii)-1, -2, and -3 would have clarified that the disclosures for items subject to § 1026.19(e)(3)(iii) must be made in good faith, even though good faith is not determined pursuant to a comparison of estimated amounts and actual costs. The proposed comments would have clarified that the disclosures must be made according to the best information reasonably available to the creditor at the time the disclosures are made. The Bureau stated in the proposal that it was concerned that unscrupulous creditors could underestimate, or fail to include estimates for, the items subject to § 1026.19(e)(3)(iii) and mislead consumers into believing the cost of the mortgage loan is less than it actually is. The Bureau also stated in the proposal its belief that this concern must be balanced against the fact that some items may change significantly and legitimately prior to consummation. Further, the Bureau stated that while the creditor should include estimates for all fees "the borrower is likely to incur," it may not be reasonable to expect the creditor to know every fee, no matter how uncommon, agreed to by the consumer, for example in the purchase and sale agreement, prior to providing the estimated disclosures. The proposal would have struck a balance between these considerations by imposing a general good faith requirement.

Accordingly, proposed comment 19(e)(3)(iii)-1 would have explained that estimates of prepaid interest, property insurance premiums, and impound amounts must be consistent with the best information reasonably available to the creditor at the time the disclosures are provided. Proposed comment 19(e)(3)(iii)-1 would have explained that differences may exist between the amounts of charges subject to § 1026.19(e)(3)(iii) disclosed pursuant to § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed upon the consumer, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. The proposed comment would have illustrated the requirement with an example.

Proposed comment 19(e)(3)(iii)-2 would have discussed the good faith requirement for required services chosen by the consumer that the consumer has been permitted to shop for, consistent with § 1026.19(e)(1)(vi)(A). It would have explained that, if a service is required by the creditor, and the creditor permits the consumer to: shop for that service, provides the written list of providers, and the consumer chooses a service provider that is not on the list to perform that service, then the actual amounts of such fees need not be compared to their original estimates.

Proposed comment 19(e)(3)(iii)-2 would have further clarified that the original estimated charge, or lack of an estimated charge for a particular service, must be made based on the best information reasonably available to the creditor at that time and would have illustrated the requirement with an example. The proposed comment would have also clarified that if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), then good faith is determined pursuant to § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii) regardless of the provider selected by the consumer, unless the provider is an affiliate of the creditor, in which case good faith is determined pursuant to § 1026.19(e)(3)(i).

Proposed comment 19(e)(3)(iii)-3 would have clarified the good faith requirement for optional settlement services (*i.e.*, service that are not lender-required) chosen by the consumer. It would have explained that differences between the amounts of estimated charges for services not required by the creditor disclosed pursuant to § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not necessarily constitute a lack of good faith and would have illustrated the requirement with an example. Proposed comment 19(e)(3)(iii)-3 would have also explained that the original estimated charge, or lack of an estimated charge for a particular service, must still be made based on the best information reasonably available to the creditor at the time that the estimate was provided, and would have illustrated the requirement with an example.

Comments

The Bureau received a number of comments seeking various adjustments and clarifications. Although an industry trade association representing affiliated real estate businesses expressed support for the inclusion of property insurance premiums in the category of charges not subject to a tolerance, even if the insurance provider is a lender affiliate, at least one industry commenter sought clarification on whether property insurance premiums would have been subject to tolerances. The commenter asserted that property insurance premiums should not be subject to limitations on increases because there are too many variables that ultimately determine the premium amount due at closing on a consumer's property insurance policy.

Some industry commenters asked the Bureau to clarify that property taxes, insurance premiums and homeowner's association, condominium, and cooperative fees are included in the costs subject to proposed § 1026.19(e)(3)(iii), regardless of whether these costs would have been placed into an escrow or similar account. An industry trade association representing community associations stated their belief that the good faith requirement would impose a burden on its members. The commenter expressed concern that the final rule would succeed in encouraging consumer shopping, which in turn would increase the number of information requests to community associations to which they must respond. The commenter was also concerned that the definitions of application and business day with respect to the original Loan Estimate delivery requirement would impose additional burden on community associations by shortening the amount of time community associations would have to respond to creditor inquiries. The commenter further expressed concern that under State consumer protection laws, community associations may be held liable if there is a difference between the estimated cost of community association assessments and the actual cost of the assessments. The commenter asserted that the Bureau should encourage creditors to use information about association assessments provided by either the seller or the buyer when preparing the Loan Estimate.

State bar associations and individual law firm commenters from States that require attorneys to conduct real estate closings requested that the Bureau include attorney and title-related fees in final § 1026.19(e)(3)(iii). They asserted that it is inappropriate to subject these fees to limitations on increases because the provision of legal services is not a commodity and thus, cannot be priced as such. Further, the commenters asserted that price limitations are not necessary because of existing competitive pressures in the market. They also expressed concern that applying tolerance rules to their fees would incent creditors to require consumers to use certain lender-selected providers to control closing costs.

Two national consumer advocacy groups questioned the inclusion of prepaid interest in proposed § 1026.19(e)(3)(iii). The commenters asserted that the creditor should not have any difficulty calculating prepaid interest if the creditor knows the closing date and the loan's interest rate. The commenters asserted creditors should be encouraged to provide new, timely disclosures, rather being permitted to provide misleading disclosures of costs that are known to the creditor. Industry trade associations representing banks and mortgage lenders asserted that the Bureau should require creditors to list the maximum possible amount of prepaid interest that could be paid by or imposed on the consumer on the original Loan Estimate because it will enhance the ability of the consumer to shop and compare loans. It appears that the commenters are concerned that without imposing this requirement, some creditors may underestimate prepaid interest.

These trade association commenters also requested that the Bureau confirm that owner's title insurance and other charges for services that the creditor does not require are not subject to the tolerance rules, even if they are provided by an affiliate of the creditor. A settlement agent commenter also asserted that the good faith requirement should not apply to costs that the consumer incur for settlement services not required by the creditor. A community bank commenter stated that it strongly recommended that settlement provider fees should not be subject to tolerances if the provider of that service was not listed on the written list of providers the creditor provides to the consumer. Finally, a law firm commenter and a State association representing land title agents asserted that the Bureau appears to have eliminated the category of settlement service fees not subject to any tolerance that exists in current Regulation X.

Final Rule

The Bureau has considered the comments and is adopting § 1026.19(e)(3)(iii) and comments 19(e)(3)(iii)-1 through -3 substantially as proposed, with revisions to enhance clarity with respect to determining good faith under § 1026.19(e)(3)(iii). The final rule also clarifies the treatment of optional settlement services (*i.e.*, services not required by the lender). *See* § 1026.19(e)(3)(iii)(E). The Bureau believes that § 1026.19(e)(3)(iii) strikes the appropriate balance between the risk that some creditors may intentionally engage in bait and switch tactics, against the fact that some items may change significantly and legitimately prior to consummation. For example, the Bureau believes that prepaid interest is one such item and should be included in § 1026.19(e)(3)(iii). The Bureau believes that the risk that creditors may intentionally manipulate the disclosure of prepaid interest is low, compared to fees in the zero or ten percent tolerance categories, and the good faith requirement in § 1026.19(e)(3)(iii) will deter intentional underestimation of prepaid interest. On a related issue, the argument made by some commenters that creditors should be required to disclose the maximum possible amount of prepaid interest that the consumer may pay at closing on the original Loan Estimate is inconsistent with the good faith requirement in the final rule.

The Bureau does not believe that charges related to owner's title insurance should be included in the charges not subject to tolerances. Under current Regulation X, such fees are subject to the ten percent tolerance rule. The Bureau believes that changing the current rule weakens consumer protection. The Bureau also believes that attorney fees for conducting closings and title-related services in States that require attorneys to conduct real estate closings should be subject to a tolerance. In these States, the attorney is performing services that a settlement agent would provide, and thus, the attorney fees should be subject to the same tolerance rules as settlement agent charges. Additionally, the Bureau believes that the fees for conducting closings can be estimated with considerable accuracy at the time the Loan Estimate is provided. Further, these fees can be adjusted in cases of changed circumstances or borrower-requested changes.

With respect to the concern that creditors may require consumers to use certain providers to control costs if attorney fees are subject to the tolerance rules, the Bureau has addressed the potential impact of the tolerance rules on competition in the general section-by-section analysis of § 1026.19(e)(3), and has concluded that this final rule may actually enhance competition in the market for settlement service providers. In response to the argument that price limitations on attorney fees are not necessary because of market forces, the Bureau notes that the final rule does not limit what an attorney may charge for conducting settlement services. The only limitation these rules set on attorney fees for conducting closings and title-related services is the limitation on the amount by which the actual fee paid by or imposed on the consumer for such services may exceed the estimated fee for such services disclosed on the Loan Estimate. Further, as discussed above, under the final rule estimated closing costs will be able to be revised to reflect cost increases due to a changed circumstance or borrower-requested changes. In this regard rule mirrors current Regulation X.

The Bureau does not believe that optional services chosen by the consumer should be exempt from the good faith requirement. As discussed above, both RESPA and TILA establish good faith requirements related to closing costs, which includes optional services chosen by the consumer. In response to concerns raised by the industry trade association representing community associations, the Bureau has adjusted comment 19(e)(3)(iii)-1 to clarify that the "reasonably available" standard in § 1026.19(e)(3)(iii) means that the estimate for a charge subject to § 1026.19(e)(3)(iii) was obtained by the creditor through due diligence. As applied to community association assessments, this means that the creditor normally may rely on the representations of the consumer or seller. The Bureau notes that this "reasonably available" standard is the same "reasonably available" standard for estimated disclosures set forth in comment 17(c)(2)(i)-1 of Regulation Z, and thus, final comment 19(e)(3)(iii)-1 contains a reference to comment 17(c)(2)(i)-1.

Finally, as noted above, a number of the commenters sought clarification on various other aspects of the proposal. As is currently the case under Regulation X, final § 1026.19(e)(3)(iii) provides that property insurance premiums are included in the category of settlement charges not subject to a tolerance, whether or not the insurance provider is a lender affiliate. The final rule also mirrors current Regulation X in that property insurance premiums, property taxes, homeowner's association dues, condominium fees, and cooperative fees are subject to tolerances whether or not they are placed into an escrow, impound, reserve, or similar account.

On the question of whether proposed § 1026.19(e)(3)(iii) would have included fees paid to service providers that were not listed on the written list of service providers set forth in § 1026.19(e)(1)(vi)(C), comment 19(e)(3)(iii)-2 provides guidance on this question. With respect to the question whether proposed § 1026.19(e)(3)(iii) would have included fees paid to lender affiliates for an optional settlement service, charges for third-party services not required by the creditor (other than owner's title insurance) are not subject to a tolerance category, even if a lender affiliate provides them. The Bureau recognizes that this position may appear to be at odds with the general treatment of affiliate fees. However, the Bureau believes that the optional nature of such services means that consumers may decide not to purchase these services later in the origination process, or choose a provider that offers a better price for the service. The Bureau believes that these factors distinguish fees paid to affiliates for optional services from fees paid to affiliates for lender-required services. Accordingly, the Bureau believes that it is not necessary to subject fees paid to affiliates for optional services to zero tolerance. However, the Bureau expects to closely monitor the implementation of this final rule, including § 1026.19(e).

19(e)(3)(iv) Revised Estimates

Regulation X § 1024.7(f) currently provides that the estimates included on the RESPA GFE are binding, subject to six exceptions. The Bureau proposed to incorporate § 1024.7(f) in § 1026.19(e)(3)(iv), which would have provided that, for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), a charge paid by or imposed on the consumer may exceed the originally estimated charge if the revision is caused by one of the six reasons identified in § 1026.19(e)(3)(iv)(A) through (F). Proposed comment 19(e)(3)(iv)-1 would have clarified the general requirement of § 1026.19(e)(3)(iv). The Bureau stated in the proposal that it agreed that there would be certain situations that could legitimately cause increases over the amounts originally estimated, and that the regulations should provide a clear mechanism for providing revised estimates in good faith. Consistent with current Regulation X,[208] proposed comment 19(e)(3)(iv)-2 would have clarified that, to satisfy the good faith requirement, revised estimates

[208] *See* § 1024.7(f)(1), (2), (3), and (5).

may increase only to the extent that the reason for revision actually caused the increase and would have provided an illustrative example of this requirement. Proposed comment 19(e)(3)(iv)-3 would have clarified the documentation requirements related to the provision of revised estimates. Regulation X § 1024.7(f) contains a separate regulatory provision related to documentation requirements. The Bureau stated in the proposal that it believed that this requirement would have been encompassed within the requirements the Bureau proposed in § 1026.25 with respect to recordkeeping. The proposed comment would have clarified that the creditors must retain records demonstrating compliance with the requirements of § 1026.19(e) in order to comply with § 1026.25. The proposed comment would have also provided illustrative examples.

A mortgage broker commenter asserted that the Bureau should expand the categories of valid reasons for revisions to include mistakes made by mortgage brokers. The Bureau has considered the comment but believes that mistakes made by the mortgage broker should not be included among the valid reasons for a settlement charge to exceed the amount originally estimated for the charge. As a general matter, errors are not a basis for revising Loan Estimates, and the Bureau does not believe that mortgage broker errors should be treated differently than other errors.

A community bank commenter stated that the Bureau should clarify that creditors are permitted to provide updated disclosures to borrowers anytime, even though the change is an increase beyond the applicable tolerance threshold. In consideration of this comment, the Bureau has revised proposed § 1026.19(e)(3)(iv) and comment 19(e)(3)(iv)-1. The Bureau believes that the revisions will clarify that § 1026.19(e)(3)(iv) does not prohibit a creditor from providing updated disclosures. Rather, § 1026.19(e)(3)(iv) provides an exception to the general rule in § 1026.19(e)(3)(i) and (ii) that a charge paid by or imposed on the consumer must be compared to the amount in the original Loan Estimate.

As adopted, § 1026.19(e)(3)(iv) provides that for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i) if the revisions is due to one of the reasons set forth in § 1026.19(e)(3)(iv)(A) through (F). Comment 19(e)(3)(iv)-1 explains that § 1026.19(e)(3)(iv) provides the exception to the rule that pursuant to § 1026.19(e)(3)(i) and (ii), good faith is determined by calculating the difference between the estimated charges originally provided under § 1026.19(e)(1)(i) and the charges paid by or imposed on the consumer. It clarifies that pursuant to § 1026.19(e)(3)(iv), for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i) if the revision is due to one of the reasons set forth in § 1026.19(e)(3)(iv)(A) through (F). Comments 19(e)(3)(iv)-2 and -3 are adopted as proposed.

19(e)(3)(iv)(A) Changed Circumstance Affecting Settlement Charges

In general. Section 1024.7(f)(1) of Regulation X currently provides that a revised RESPA GFE may be provided if changed circumstances result in increased costs for any settlement service such that charges at settlement would exceed the tolerances for those charges. The Bureau proposed § 1026.19(e)(3)(iv)(A), which would have also provided that a valid reason for re-issuance exists when changed circumstances cause estimated charges to increase or, for those charges subject to § 1026.19(e)(3)(ii), cause the sum of all such estimated charges to increase by more than ten percent. Proposed comment 19(e)(3)(iv)(A)-1 would have provided further explanation of this requirement and would have included several examples. The Bureau stated in the proposal its belief that creditors should be able to provide revised estimates if certain situations occur that increase charges.

Changed circumstance. Section 1024.2 in current Regulation X generally defines changed circumstances as information and events that warrant revision of the estimated amounts included on the RESPA GFE. The Bureau proposed a similar definition, but with certain changes to address feedback that it had received suggesting that there was confusion about the Regulation X definition. Thus, the Bureau proposed in § 1026.19(e)(3)(iv)(A) to define a changed circumstance as: (1) an extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction; (2) information specific to the consumer or transaction that the creditor relied upon when providing the disclosures and that was inaccurate or subsequently changed; or (3) new information specific to the consumer or transaction that was not relied on when providing the disclosures.

This proposed definition, most significantly, would have omitted the fourth prong of the existing definition of changed circumstances: "[o]ther circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems." The Bureau suggested in the proposal that the items listed in the fourth prong were already covered by other elements of the definition and questioned whether the overlap had contributed to the industry uncertainty surrounding what scenarios constitute a changed circumstance under the current definition of changed circumstances in Regulation X. The Bureau sought comment on whether its proposed definition of changed circumstances was appropriate, and specifically on whether there are scenarios that should be considered a changed circumstance that would not be captured under any of the three prongs set forth in the proposed definition.

Proposed comment 19(e)(3)(iv)(A)-2 would have provided additional elaboration on the proposed definition and would have provided several examples of changed circumstances. Proposed comment 19(e)(3)(iv)(A)-3 would have explained how the definition of application under § 1026.2(a)(3) relates to the definition of changed circumstances under § 1026.19(e)(3)(iv)(A). The proposed comment would have explained that although a creditor is not required to collect the consumer's name, monthly income, or social security number to obtain a credit report, the property address, an estimate of the value of the property, or the mortgage loan amount sought, for purposes of determining whether an estimate is provided in good faith under § 1026.19(e)(1)(i), a creditor is presumed to have collected these six pieces of information. The proposed comment would have further explained that if a creditor provides the disclosures required by § 1026.19(e)(1)(i) prior to receiving the property address from the consumer, the creditor could not subsequently claim that the receipt of the property address was a changed circumstance, under § 1026.19(e)(3)(iv)(A) or (B).

Industry commenters had mixed reactions to the Bureau's proposed definition of changed circumstances. A regional bank holding company commenter and a community bank commenter stated that they supported the proposed definition. In contrast, a company that performs compliance training and consulting services to credit unions stated that the Bureau should not change the current definition of changed circumstances because the change is not required by the Dodd-Frank Act. The commenter also asserted that changing the definition of changed circumstances would result in an extended implementation period. A national provider of title insurance and settlement services stated that the Bureau should conduct more research as to the most common changed circumstances that occur in transactions that would be subject to § 1026.19(e) and (f).

Some commenters, including an industry trade association representing Federally-chartered credit unions, objected to the Bureau's proposal to omit the fourth prong in the current definition of changed circumstances. The commenters expressed concern that the elimination of the fourth prong meant that situations such as boundary disputes, which are included as instances of changed circumstances under the current definition, would not be included under the Bureau's final rule. However, this commenter also asserted that the Bureau should provide additional guidance on what scenarios would be included in the fourth prong of the definition of changed circumstances if it retains the fourth prong in the final rule.

Several industry trade association commenters asserted that the Bureau should expand the definition of "changed circumstances." Industry trade association commenters representing banks and mortgage lenders asserted that the Bureau should treat the scenario of a loan exceeding the points and fees thresholds for a qualified mortgage, HOEPA loan, or a qualified residential mortgage as a changed circumstance. In the alternative, they asserted that the Bureau should allow the creditor to deny the loan when the applicable threshold has been exceeded. An industry trade association representing Federally-charted credit unions asserted that the proposed definition of changed circumstances should be expanded to include situations where the consumer increases the down payment amount because it is very likely that settlement charges will change as a result of the increase in the down payment amount. The commenter also stated that changed circumstances should include situations where the seller changes a condition that would result in a change to estimated costs disclosed on the Loan Estimate.

Several industry commenters urged the Bureau to change the proposed definition of changed circumstances so that the term "unexpected event" is understood to mean an "unexpected event" from the creditor's point of view. Most of the commenters asserted that the change would reduce the incentive for the consumer to withhold information. Additional commenters requested clarification with respect to the term “interested party,” asserting that such clarification was necessary so that the creditor is not responsible for matters under the control of other parties.

A State bankers association also requested guidance on whether a change to the loan amount or monthly payment would be considered a changed circumstance, if it does not result in a cost increase or in the APR becoming inaccurate. The commenter reported that its members have been advised by their regulators to reissue the RESPA GFE in such circumstances and asserted that this guidance has resulted in compliance burden.

A large bank commenter expressed concern that proposed § 1026.19(e)(3)(iv)(A) would not permit a creditor to reset estimates for purposes of the good faith analysis under § 1026.19(e)(3)(ii) unless the aggregate amount of all such charges increased by more than ten percent due to a changed circumstance. The commenter also observed that the current definition of changed circumstances sets forth what situations are not considered changed circumstances. The commenter sought clarification on whether creditors may assume that situations that are not changed circumstances under the current definition of changed circumstances would be considered changed circumstances under the proposed definition.

Lastly, a large bank commenter stated that the Bureau must provide additional clarity on whether it plans to issue guidance on changed circumstances that is similar to the HUD RESPA FAQs, or if the Bureau plans to adopt the HUD RESPA FAQs that address changed circumstances. The commenter stated that the HUD RESPA FAQs were critical to creditors’ ability to establish compliance programs. Similarly, a software vendor commenter requested that the Bureau clarify whether the HUD RESPA FAQs on changed circumstances would still be valid after this rule is finalized.

Final Rule

The Bureau has considered the comments, and is adopting § 1026.19(e)(3)(iv)(A) and comments 19(e)(3)(iv)(A)-1 through 3 substantially as proposed, with revisions to enhance clarity. For the reasons stated below, the Bureau does not believe that the comments warrant material changes to proposed § 1026.19(e)(3)(iv)(A). The Bureau believes that the final rule clearly indicates that unless a scenario falls under one of the three prongs listed under the definition of changed circumstances, the scenario is not a changed circumstance. The Bureau recognizes that the current definition of changed circumstance sets forth both scenarios that are changed circumstances and those that are not.[209] The Bureau believes that this is a confusing formulation, and the Bureau's approach makes the meaning of changed circumstances clearer. But the Bureau agrees that there is value in explaining what changed circumstances do not include, and notes that for purposes of Regulation Z, explanations and clarifications are generally set forth in the official staff commentary to Regulation Z. The Bureau is taking this approach. For example, comment 19(e)(3)(iv)(A)-3 explains that a creditor may not claim that a changed circumstance has occurred if it provides the Loan Estimate pursuant to § 1026.19(e)(1)(i) without collecting any of the six items of information that make up the definition of application. This reflects the current understanding of which scenarios are not changed circumstances.[210]

The Bureau also believes that it is appropriate to adjust the current definition of changed circumstances, notwithstanding the assertion that the Bureau should not change the current definition of changed circumstances because it is not required by the Dodd-Frank Act. The fact

[209] 12 CFR 1024.2(b).
[210] *Id.*

that an industry trade association representing Federally-chartered credit unions requested additional guidance on the current definition supports the Bureau's belief that there is industry uncertainty surrounding what constitute a changed circumstance. The Bureau does not believe that the changes this final rule makes to the current definition of changed circumstances would result in an extended implementation period because the Bureau believes that the most significant change – the elimination of the fourth prong – is a change to streamline the current definition without narrowing the scope of changed circumstances. The Bureau also does not believe that additional research is needed on changed circumstances because the Bureau believes that the most common scenarios that should be considered a changed circumstance are encompassed in the final definition.

The Bureau also declines to retain the fourth prong in the current definition of changed circumstances in the final rule. The Bureau believes that the final rule encompasses the scenarios that are currently addressed by the fourth prong. Comment 19(e)(3)(iv)(A)-2 provides an example of how a boundary dispute is considered a changed circumstance.

The Bureau recognizes that creditors are incented not to make loans that exceed the points and fees thresholds for qualified mortgages, HOEPA loans, or qualified residential mortgages. If a changed circumstance causes the loan to exceed the application threshold, then the creditor has a legitimate basis for revision. However, the Bureau does not believe that the fact that the event occurred is, by itself, a changed circumstance. A loan may exceed the threshold because of mistakes that the creditor made in the points and fees calculation. As stated elsewhere in the section-by-section analysis of § 1026.19(e), creditor errors are not legitimate reasons for revising Loan Estimates. The Bureau also believes that it is not necessary to specifically provide that a creditor may deny a loan once the applicable points and fees threshold has been exceeded because the Loan Estimate is not a loan commitment. However, the Bureau reminds creditors that Regulation B contains requirements that apply when the creditor denies a consumer's loan application.

In response to the assertion that the definition of changed circumstances should include a scenario where the consumer increases the down payment amount, the Bureau believes that to the extent that the act of increasing the down payment amount actually increased settlement charges subject to the tolerance rules beyond the applicable tolerance, then the scenario would be considered a valid reason for re-issuance under § 1026.19(e)(3)(iv)(C), which the Bureau is adopting as proposed for reasons discussed below. Additionally, the Bureau believes that scenarios where the seller changes a condition that would result in a change to estimated costs disclosed on the Loan Estimate, are encompassed within the definition of changed circumstances.

With respect to the argument that the Bureau should change the proposed definition of changed circumstances so that the term "unexpected event" is understood to mean an "unexpected event" from the creditor's point of view because the modification would reduce the incentive for the consumer to withhold information, the Bureau declines. As illustrated in comment 19(e)(3)(iv)(A)-2, the term "unexpected event" is meant to encompass scenarios that involve changes that take place after the original Loan Estimate has been provided to the consumer. The consumer would not be able to withhold information about events that have not occurred.

The Bureau declines to clarify the term "interested party." The Bureau believes that the term "interested party" should be interpreted broadly because mortgage loan transactions are complex and affect the interests of many parties. For example, the local government entity in which the property is located can be considered an interested party because the government entity has an interest in the transfer taxes that would be collected upon the consummation of the transaction. Further, with respect to the assertion that clarifying the term "interested party" is necessary to ensure that the creditor is not responsible for matters under the control of other parties, the Bureau believes adopting this position would undermine § 1026.19(e)(1)(ii), which provides that the creditor is responsible for ensuring that a mortgage broker complies with § 1026.19(e) when the mortgage broker provides the disclosures required by § 1026.19(e). The Bureau also believes that this position contradicts the tolerance rules, which makes creditors responsible for providing reliable estimates of costs under the control of other parties, such as third-party settlement service providers and government jurisdictions.

The Bureau believes that whether a change to the loan amount or monthly payment would be considered a changed circumstance depends on whether the reason for the change is a scenario that is described in one of the three prongs of the definition of changed circumstances.

The Bureau declines to change the proposed rule such that each occurrence of a changed circumstance becomes an opportunity for a creditor to reset the estimates used for the good faith analysis under § 1026.19(e)(3)(ii). Limiting legitimate reasons for revisions for charges subject to the ten percent tolerance rule to situations where the changed circumstance causes the aggregate amount of all such charges to increase by more than ten percent is the current rule under Regulation X and the Bureau's intention. Otherwise, if a creditor is allowed to reset the estimate used for the good faith analysis under § 1026.19(e)(3)(ii) every time there is a changed circumstance, it weakens the ten percent tolerance rule. Finally, with respect to the status of the HUD RESPA FAQs that address changed circumstances, the final rule will replace the HUD RESPA FAQs with respect to transactions subject to § 1026.19(e), (f), and (g). But with respect to transactions currently subject to Regulation X, but will not be subject to § 1026.19(e), (f), and (g), the HUD RESPA FAQs will continue to apply. Accordingly, HUD RESPA FAQs, instead of the final rule, will continue to apply to reverse mortgage transactions and federally related mortgage loans made by persons that are not "creditors" under Regulation Z.

19(e)(3)(iv)(B) Changed Circumstance Affecting Eligibility

Section 1024.7(f)(2) of Regulation X currently provides that a revised RESPA GFE may be provided if a changed circumstance affecting borrower eligibility results in increased costs for any settlement service such that charges at settlement would exceed the tolerances for those charges. The Bureau proposed § 1026.19(e)(3)(iv)(B), which would have provided that a valid reason for reissuance exists when a changed circumstance affecting the consumer's creditworthiness or the value of the collateral causes the estimated charges to increase. Proposed comment 19(e)(3)(iv)(B)-1 would have explained the requirement and provided illustrative examples. The Bureau did not receive any comments on proposed § 1026.19(e)(3)(iv)(B). Accordingly, the Bureau is finalizing § 1026.19(e)(3)(iv)(B) and comment 19(e)(3)(iv)(B)-1 with minor revisions to enhance clarity.

19(e)(3)(iv)(C) Revisions Requested by the Consumer

Section 1024.7(f)(3) of Regulation X currently provides that a revised RESPA GFE may be provided if a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan. The Bureau incorporated this same concept in proposed § 1026.19(e)(3)(iv)(C), which would have provided that a valid reason for reissuance exists when a consumer requests revisions to the credit terms or the settlement that cause estimated charges to increase. Proposed comment 19(e)(3)(iv)(C)-1 would have illustrated this requirement with an example.

A law firm commenter asserted that it was unreasonable to require a creditor to provide revised disclosures even though the reason for the revision was due to a borrower-requested change. The Bureau has considered the comment but is finalizing § 1026.19(e)(3)(iv)(C) and comment 19(e)(3)(iv)(C)-1 as proposed because § 1026.19(e)(3)(iv)(C) reflects the current rule in Regulation X, § 1024.7(f)(3). Creditors should be able to comply with this requirement, because currently they are required to comply with an identical requirement (§ 1024.7(f)(3)) under Regulation X.

19(e)(3)(iv)(D) Interest Rate Dependent Charges

Section 1024.7(f)(5) of Regulation X provides that, if the interest rate has not been locked, or a locked interest rate has expired, the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate may change. It also provides that when the interest rate is later locked, a revised RESPA GFE must be provided showing the revised interest rate-dependent charges and terms. The Bureau proposed to retain the same basic approach in proposed § 1026.19(e)(3)(iv)(D) and to illustrate the requirement with examples. The Bureau sought comment on the frequency and magnitude of revisions to the interest rate dependent charges, the frequency of cancellations of contractual agreements related to interest rate dependent charges, such as rate lock agreements, and the reasons for such revisions and cancellations. Although the Bureau ultimately proposed taking the same approach as the current regulation, it acknowledged in the proposal a number of concerns that it believed warranted careful monitoring of the market. While the Bureau acknowledged that several costs are affected by the consumer's rate and thus may fluctuate until that rate is locked, the Bureau expressed concern that the current provision in Regulation X could be used to harm consumers by engaging in rent-seeking behavior or attempting to circumvent the requirements of TILA or RESPA. However, the Bureau was unaware of any evidence that creditors were in fact using current Regulation X § 1024.7(f)(5) to harm consumers or to circumvent RESPA.

Comments

A State trade association commenter representing bankers stated that it believed that the regulatory text in proposed § 1026.19(e)(3)(iv)(D) with respect to when a creditor must provide the revised disclosures to the consumer when the interest rate is set was in conflict with the general redisclosure rule proposed in § 1026.19(e)(4)(i) because proposed § 1026.19(e)(3)(iv)(D) stated that the creditor must provide revised disclosures "on the date that the interest rate is reset," whereas the general redisclosure rule gave the creditor three business days to deliver the revised disclosures. The commenter also requested that the Bureau clarify whether redisclosure is necessary when the locking of the interest rate does not change the interest rate or cost estimates disclosed on the original Loan Estimate. Similarly, a community bank commenter asserted that if the interest rate is locked after the creditor has provided the original Loan Estimate, the creditor should be permitted to determine whether to provide redisclosures if there is no change to the disclosures that were originally provided.

A large bank commenter stated that the final rule should require that the revised Loan Estimate that is provided after the interest rate has been set should reflect all the items impacted by the revisions to the interest rate, bona fide discount points, and lender credits. The commenter asserted that the requirement would help ensure that information about monthly payments, projected payments, the cash to close amount, loan costs, and disclosures in the "Comparison" section of the Loan Estimate are also revised.

Final Rule

The Bureau has considered the comments, and for reasons set forth below, is finalizing § 1026.19(e)(3)(iv)(D) and comment 19(e)(3)(iv)(D)-1 with revisions to enhance clarity. The delivery requirement set forth in proposed 1026.19(e)(4)(i) was intended to establish the maximum amount of time that a creditor may let pass before providing the consumer with the revised Loan Estimate. The Bureau does not believe that creditors need that much time in situations where the interest rate is locked because the creditor controls when it executes the rate lock agreement. But in consideration of the comments, the Bureau is adding comment 19(e)(4)(i)-2 to explain the relationship between § 1026.19(e)(4)(i) and § 1026.19(e)(3)(iv)(D). The comment clarifies that if the reason for the revision is provided under § 1026.19(e)(3)(iv)(D), notwithstanding the three-business-day rule set forth in § 1026.19(e)(4)(i), § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) on the date the interest rate is locked. Comment 19(e)(4)(i)-2 also references comment 19(e)(3)(iv)(D)-1.

Final § 1026.19(e)(3)(iv)(D) and commentary also clarify that if the interest rate is simply set, but there is no rate lock agreement, § 1026.19(e)(3)(iv)(D) does not apply. Upon a review of the proposed rule text and commentary, the Bureau acknowledges that the proposed language could have caused confusion about whether the setting of the interest rate requires redisclosure where a rate lock agreement does not exist. But the Bureau intended that § 1026.19(e)(3)(iv)(D) only applies in situation where a rate lock agreement has been entered into between the creditor and borrower, or where such agreement has expired. The Bureau has made clarifying revisions to the rule text and commentary to address the potential confusion.

With respect to the request that the final rule require that the revised Loan Estimate reflect all of the items that are impacted by the revisions to the interest rate, bona fide discount points, and lender credits, the Bureau has made adjustments to the final rule text to clarify that the revised version of the Loan Estimate shall contain revisions to any other interest rate dependent charges and terms. The Bureau notes that this is the current rule under Regulation X, § 1024.7(f)(5). Lastly, as discussed above, the Bureau intends that the creditor redisclose interest rate dependent charges and terms when the interest rate is locked. Accordingly, if the creditor has to redisclose points because the consumer is paying points to the creditor to reduce the interest rate, the consumer could be paying both bona fide discount points, as defined in § 1026.32(b)(3), when the 2013 ATR Final Rule takes effect, and points that are not bona fide discount points. Final § 1026.19(e)(3)(iv)(D) provides that on the date the interest rate is locked, the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) to the consumer with the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1),[211] lender credits, and any other interest rate dependent charges and terms. The Bureau believes that this adjustment will facilitate compliance with this final rule because § 1026.19(e)(3)(iv)(D) now clearly indicates that to comply, the creditor must redisclose all the points disclosed pursuant § 1026.37(f)(1), even if they include points in addition to the bona fide discount points under § 1026.32(b)(3).

19(e)(3)(iv)(E) Expiration

Section 1024.7(f)(4) of Regulation X currently provides that if a borrower does not express an intent to continue with the transaction within ten business days after the RESPA GFE is provided, or such longer time specified by the loan originator, then the loan originator is no longer bound by the RESPA GFE. Similarly, the Bureau proposed § 1026.19(e)(3)(iv)(E), which

[211] The term “bona fide discount points” was not defined until the issuance of the Bureau’s 2013 ATR Final Rule, which post-dated the issuance of the TILA-RESPA Proposal.

would have provided that a valid reason for reissuance exists when a consumer expresses an intent to proceed more than ten business days after the disclosures are provided. Proposed comment 19(e)(3)(iv)(E)-1 would have illustrated this requirement with an example. The Bureau explained in the proposal that it believed that it was important for consumers to be able to rely on the estimated charges for a sufficient period of time to permit shopping, and that ten business days was a reasonable period. Once it expired, however, the Bureau believed that creditors should be permitted to provide revised disclosures that may reflect new charges.

The Bureau received few comments on the proposal. Some industry commenters sought clarification on how to count the ten-business-day period if the creditor provided the consumer with a revised Loan Estimate within the ten-business-day period before the consumer has indicated an intent to proceed. A mortgage broker commenter stated that mortgage brokers do not have control over third-party fees, and therefore, making the Loan Estimate binding on a mortgage broker for ten business days would be impractical.

The Bureau is finalizing § 1026.19(e)(3)(iv)(E) and comment 19(e)(3)(iv)(E)-1 substantially proposed, with revisions to enhance clarity. As adopted, § 1026.19(e)(3)(iv)(E) clarifies how to count the ten-business-day period, because it provides that the ten-business-day period begins after the disclosures required under § 1026.19(e)(1)(i) are provided pursuant to § 1026.19(e)(1)(iii). Lastly, with respect to the assertion that the mortgage broker should not be bound by the terms of the original Loan Estimate for ten business days after the mortgage broker provides it to the consumer, as noted above, the Bureau believes that a mortgage broker must comply with all of the requirements of § 1026.19(e) if the mortgage broker provides a consumer with the Loan Estimate.

19(e)(3)(iv)(F) Delayed Settlement Date on a Construction Loan

Section 1024.7(f)(6) of Regulation X currently provides that in transactions involving new construction home purchases, where settlement is expected to occur more than 60 calendar days from the time a RESPA GFE is provided, the loan originator cannot issue a revised RESPA GFE unless the loan originator provided the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to the real estate closing, the loan originator may issue a revised RESPA GFE. The Bureau concluded that this approach made sense where consummation will not occur for an extended period of time. Accordingly, proposed § 1026.19(e)(3)(iv)(F) would have provided that a valid reason for revision exists on construction loans when consummation is scheduled to occur more than 60 days after delivery of the estimated disclosures, provided that the consumer was alerted to this fact when the estimated disclosures were provided. Proposed comment 19(e)(3)(iv)(F)-1 would have clarified that a loan for the purchase of a home either to be constructed or under construction is considered a construction loan to purchase and build a home for the purposes of § 1026.19(e)(3)(iv)(F) and would have illustrated the requirement with examples. The Bureau stated in the proposal that the proposed comment would be consistent with guidance provided by HUD in the HUD RESPA FAQs p. 21, # 2 ("GFE - New construction"). The Bureau did not receive any comments on proposed § 1026.19(e)(3)(iv)(F), and is adopting § 1026.19(e)(3)(iv)(F) and comment 19(e)(3)(iv)(F)-1 as proposed, except for minor revisions to enhance clarity.

19(e)(4) Provision and Receipt of Revised Disclosures

19(e)(4)(i) General Rule

TILA's requirement that creditors provide corrected disclosures is not linked to the time when a creditor discovers that a correction is necessary. Instead, section 128(b)(2)(D) of TILA provides that the creditor shall furnish additional, corrected disclosures to the borrower not later than three business days before the date of consummation of the transaction, if the previously disclosed annual percentage rate is no longer accurate, as determined under TILA section 107(c), and this requirement is set forth in current § 1026.19(a)(2)(ii). RESPA does not expressly address timing requirements for the delivery of revised RESPA GFEs, but Regulation X generally requires that a revised RESPA GFE must be provided within three business days of the creditor receiving information sufficient to establish a reason for revision.[212]

While both regulations contain redisclosure requirements, their approaches are different. Regulation Z ensures that the consumer is made aware of changes at a specific point in time before consummation, but does not require the creditor to keep the consumer informed of incremental changes during the loan origination process. In contrast, Regulation X does, but those changes may occur up to the day of settlement.

The Bureau proposed adopting the Regulation X approach because it believed that intermittent redisclosure of the integrated Loan Estimate is necessary under RESPA because settlement service provider costs typically fluctuate during the mortgage loan origination process. Furthermore, the Bureau stated its belief that intermittent redisclosure is consistent with the purposes of TILA because it promotes the informed use of credit by keeping the consumer apprised of changes in costs.

Accordingly, the Bureau proposed § 1026.19(e)(4)(i), which would have provided that, if a creditor delivers a revised Loan Estimate, the creditor must do so within three business days of establishing that a valid reason for revision exists. Proposed comment 19(e)(4)-1 would have

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[212] "If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances." 12 CFR 1024.7(f)(1) and (2). "If a revised GFE is to be provided, the loan originator must do so within 3 business days of the borrower's request." 12 CFR 1024.7(f)(3). "The loan originator must provide the revised GFE within 3 business days of the interest rate being locked or, for an expired interest rate, re-locked." 12 CFR 1024.7(f)(5).

illustrated this requirement with examples.

Comments

The Bureau received a number of comments on the proposal, including, as discussed below, comments urging various alternative approaches to the incremental approach to redisclosure the Bureau proposed. A large bank commenter asserted that the proposed three-business-day redisclosure requirement ignores the realities of how creditors process information and underwrite loans and is arbitrary. It stated that 50 percent of lender credits and refunds it issues as required by current Regulation X are caused by its inability to meet Regulation X's three-business-day redisclosure requirement. The commenter stated that documenting the day that the event that caused the changed circumstance is difficult and uncertain because information about the event may take time to reach the division inside the creditor's organization that is responsible for providing the revised disclosures, and that in most cases, information must be verified by the creditor. The commenter also stated that in many cases, it is simply not possible for the creditor to verify that a changed circumstance has occurred and ensure that a revised disclosure is issued within three business days. The large bank commenter also asserted that the three-business-day requirement for redisclosure is especially unworkable with respect to charges in the ten percent tolerance category because when the estimated sum of charges exceeds the ten percent threshold, it could be the cumulative result of multiple changed circumstances.

Large bank commenters and industry trade associations urged the Bureau to adopt an alternative approach to the redisclosure requirement set forth in proposed § 1026.19(e)(4)(i). The commenters described the approach as the "milestone approach." Under the "milestone approach," revised disclosures would only have to be provided to the consumer at specific points in the mortgage origination process, such as the time that the interest rate is set and at the time of loan commitment because the occurrence of these events usually trigger closing cost changes. The commenters asserted that adopting a "milestone approach" would benefit consumers because it would address the issue of information overload. One of the supporters of the "milestone approach" stated that a series of RESPA GFEs is often provided to the consumer under the current Regulation X and often desensitizes the consumer to the information provided. The commenter asserted that information overload would worsen under the proposal because the Bureau's proposed definition of "application" would lead to more redisclosures. Another large bank commenter supporting the "milestone approach" stated that because the "milestone approach" would tie to key events in the origination process, the approach still ensures that the consumer gets a complete picture of the loan terms. One of the large bank commenters that supported the "milestone approach" also asserted that the approach would ease compliance burden because it would allow creditors to develop streamlined and efficient compliance programs, thus facilitating supervision.

Industry trade associations representing banks and mortgage lenders also advocated for redisclosure requirements different than what the Bureau proposed. The same industry trade association representing mortgage lenders asserted that it would be far less confusing to consumers and less burdensome to creditors if a redisclosure made within 30 days after receipt of a consumer's intent to proceed is deemed timely for all changed circumstances that occurred more than three days before the redisclosure is provided. As discussed above in the section-by-section analysis of § 1026.19(e)(1)(iii), industry trade associations representing banks and mortgage lenders expressed the view that the best solution to excessive redisclosure would be to require the creditor to provide a Loan Estimate some number of days after the consumer communicates an intent to proceed, and the commenters indicated a preference that it be 30 days.

With respect to the provision of revised Loan Estimates, commenters expressed the view that the creditor should not have to provide the revised Loan Estimate to the consumer if the only items that have changed after the original Loan Estimate was provided are the closing date and charges related to the closing date. They also expressed the view that sending revised Loan Estimates in these situations would be redundant.

Industry trade associations representing banks and mortgage lenders asked if a revised Loan Estimate is required within three business days if fees increased due to a changed circumstance or borrower-requested change. They also asked if a revised Loan Estimate is ever required when there is not a changed circumstance or borrower-requested change. The commenters additionally asked if a creditor may redisclose based on underwriting information without receiving consumer approval to make the changes. The commenters also stated that it appeared that the proposal would have given the creditor the option of either delivering a revised Loan Estimate within three business days of a valid reason for revision, or waiting until four days before consummation to deliver the revised Loan Estimate.

The commenters also asserted that when new information is received, such as partial income verification, more than three business days is needed for the creditor to evaluate the information to comply with ability-to-repay and investor requirements. The commenters requested confirmation from the Bureau that the three-business-day period does not begin until after the evaluation is complete. A community bank commenter requested specific guidance from the Bureau as to the determination of when the three-business-day period begins for changed circumstances in instances when there may be new information received by the borrower or inconclusive information received. The commenter stated that in order to prevent an endless stream of redisclosures, the three-business day period should begin when the lender has fully evaluated the information.

Final Rule

After consideration of the comments, the Bureau is adopting the Regulation X approach to redisclosures that the Bureau proposed. The Bureau believes the approach best ensures that consumers are kept informed of incremental changes during the loan origination process by creditors, and thus, would best serve the policy goals of both TILA and RESPA, which the Bureau discussed in the proposal and above. Additionally, given that a number of industry commenters have raised concerns about the cost of redisclosures, the Bureau believes that creditors are incented to avoid excessive redisclosures. The Bureau also believes that the final rule facilitates the goal of limiting excessive redisclosures by limiting legitimate reasons for redisclosures to the six exceptions set forth in § 1026.19(e)(3)(iv). The Bureau also is not persuaded that there would be significant compliance burden because the final rule applies the current timing requirement in Regulation X for delivery of the revised RESPA GFE to the Loan Estimate.

In response to the concern that the Bureau's proposed definition of "application" would lead to more redisclosures, the Bureau has addressed the concern in great detail in the section-by-section analysis of § 1026.2(a)(3), above, and has concluded that it does not believe that the final rule will lead to more redisclosures. In consideration of the various requests for clarification on the timing requirement for the delivery of the revised Loan Estimate, the Bureau has revised proposed § 1026.19(e)(4)(i) and proposed comment 19(e)(4)-1, renumbered as comment 19(e)(4)(i)-1, to facilitate compliance. Final § 1026.19(e)(4)(i) provides that subject to the requirements of § 1026.19(e)(4)(ii), if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under § 1026.19(e)(3)(iv)(A) through (C), (E) and (F) applies. Comment 19(e)(4)(i)-1 explains the three-business-day requirement set forth in § 1026.19(e)(4)(i) and provides illustrative examples. Additionally, as noted above in the section-by-section analysis of § 1026.19(e)(3)(iv)(D), the Bureau is adding comment 19(e)(4)(i)-2 to clarify the relationship between § 1026.19(e)(3)(iv)(D) and (e)(4)(i).

Together with the revisions to the text of § 1026.19(e)(3)(iv) and related commentary, the Bureau believes that the revisions to the text of § 1026.19(e)(4)(i) and related commentary make it unnecessary to further clarify whether a revised Loan Estimate must be provided when there is not a changed circumstance or borrower-requested change, other than the fact that it is four days before closing.

On the question of whether a creditor may issue a revised Loan Estimate without receiving consumer approval to make the changes, the Bureau believes that the final rule and commentary are clear that creditors are not required to obtain consumer approval before the creditor provides a revised Loan Estimate. The Bureau also believes that the final rule and commentary are clear that a creditor may not wait until four days before consummation to deliver the revised Loan Estimate when doing so violates the three-business-day requirement set forth § 1026.19(e)(4) or the day-of requirement set forth in § 1026.19(e)(3)(iv)(D).

With respect to requests that the Bureau clarify when the three-business-day delivery period begins, the Bureau believes that the examples set forth in comment 19(e)(1)(4)(i)-1 clearly illustrate that the three-business-day begins on the date that the creditor receives information that sufficiently establishes the reason for revision. The Bureau believes that the comment is clear in explaining that the burden is on the creditor to show that it has a reasonable basis to believe that the information it receives does not sufficiently establish the reason for the revision.

Lastly, in response to the comment from a large bank creditor that the proposed redisclosure delivery requirement would be especially unworkable for charges in the ten percent tolerance category, the Bureau believes that comment 19(e)(4)(i)-1.ii clearly illustrates that with respect to fees included in the ten percent tolerance category, the three-business day period is counted from the date on which the creditor has received sufficient information to establish that the sum of all fees included in the category of fees subject to the ten percent tolerance rule has exceeded the original estimated sum of such fees by more than ten percent due to changed circumstances. In other words, if, for example, the creditor receives information on May 1, that a fee included in the ten percent tolerance category will increase by an amount totaling six percent of the originated estimated sum of charges in the ten percent tolerance category, and then on May 8th, the creditor receives information that a changed circumstance will cause a different fee included in the ten percent tolerance category to increase by an amount totaling two percent of the originated estimated sum of charges in the ten percent tolerance category, and then on June 15th the creditor receives information that a changed circumstance will cause a different fee included in the ten percent tolerance category to increase by an amount totaling four percent of the originated estimated sum of charges in the ten percent tolerance category, to comply with § 1026.19(e)(4)(i), the creditor would have to provide revised disclosures reflecting the 12 percent increase by June 18th, assuming that June 16th, 17th, and 18th are business days for purposes of § 1026.2(a)(6). The Bureau adopts § 1026.19(e)(4)(i) pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act.

19(e)(4)(ii) Relationship to Disclosures Required Under § 1026.19(f)(1)(i)

Proposed § 1026.19(e)(4)(ii) would have provided that the creditor shall deliver revised versions of the disclosures required by § 1026.19(e) in a manner that ensures such revised disclosures are not received on the same business day as the consumer receives the disclosures required by § 1026.19(f)(1)(i). The Bureau proposed this provision pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Proposed comment 19(e)(4)-2 would have clarified that revised disclosures may not be delivered at the same time as the final disclosures. The proposed comment would have also explained that creditors would comply with the requirements of § 1026.19(e)(4) if the revised disclosures are reflected in the disclosures required by § 1026.19(f)(1)(i) (*i.e.*, the Closing Disclosure). This proposed comment would have also included illustrative examples of the requirement.

As explained above, the purposes of RESPA and TILA include effective advance disclosure of settlement costs, and the informed use of credit by consumers. *See* TILA section 102; RESPA section 2. Section 105(a) of TILA also permits the Bureau to prescribe regulations that would improve consumers' ability to understand the mortgage loan transaction. The Dodd-Frank Act enhances TILA's focus by placing special emphasis on the requirement that disclosures must be made in a way that is clear and understandable to the consumer. Section 1405 of the Dodd-Frank Act focuses on improving "consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures." The Bureau stated in the proposal that it was aware that, in some cases, creditors have provided a revised RESPA GFE at the real estate closing along with the RESPA settlement statement. The Bureau stated in the proposal its concern that this practice may be confusing for consumers and may diminish their awareness and understanding of the transaction.

The Bureau also stated in the proposal that it recognized there were cases in which a consumer might not have been confused by receiving good faith estimates on the same day, or even at the same time, as the consumer receives the actual settlement costs. However, because the estimated costs would match the actual costs, the Bureau expressed concern that consumers could be confused by seemingly duplicative disclosures. The Bureau was also concerned that this duplication could contribute to information overload stemming from too many disclosures, which could, in turn, inhibit the consumer's ability to understand the transaction. Accordingly, the Bureau proposed § 1026.19(e)(4)(ii) to prohibit creditors from providing a consumer with disclosures of estimated and actual costs at the same time. To draw a clear line to facilitate compliance, the creditor would not have complied with the requirements of proposed § 1026.19(e) if the consumer received revised versions of the disclosures required under § 1026.19(e)(1)(i) on the same business day as the consumer received the disclosures required by § 1026.19(f)(1)(i).

Comments

Reaction to the proposed prohibition on the simultaneous delivery of the Loan Estimate and the Closing Disclosure was mixed. In joint comments, trade associations representing State financial services regulators supported the prohibition. They stated that the proposed prohibition would incent creditors to avoid surprising consumers and intentionally under-estimating closing costs to get borrowers to select loans that may not be in the borrower's best interest. A non-depository lender that makes manufactured home loans stated that it supported the aspect of the proposal that would have permitted the creditor to reflect a revised disclosure on the Closing

Disclosure.

In contrast, an industry trade association commenter representing non-depository financial services providers stated that the proposed prohibition on the simultaneous delivery of the Loan Estimate and Closing Disclosure could delay closings because settlement costs could increase shortly before the closing, and the creditor must be able to provide the revised Loan Estimate to reflect the increase. Industry trade associations representing banks and mortgage lenders stated that the requirement that a revised Loan Estimate must be received by the consumer four days before the consummation does not take into account the significance of the change or the burden associated with the waiting period. The commenters asserted that a four-day waiting period between the receipt of the revised Loan Estimate and consummation was unnecessary because the Bureau was also proposing to impose a three-business-day waiting period between the receipt of the Closing Disclosure and consummation in proposed § 1026.19(f)(1)(ii). A regional bank holding company expressed concern that under the proposal, a consumer could receive the Loan Estimate and the Closing Disclosure simultaneously if the creditor sends the disclosures by mail.

Final Rule

The Bureau has considered the comments and believes that § 1026.19(e)(4)(ii), as proposed, would not have delayed closings or limited a creditor's ability to manage cost increases and disclose them to the consumer, because although it would have prohibited simultaneous delivery of the Loan Estimate and the Closing Disclosure, proposed comment 19(e)(4)-2 would have clarified that under certain circumstances, a creditor could comply with § 1026.19(e)(4) by reflecting revised disclosures on the Closing Disclosure. The Bureau acknowledges that some commenters did not understand proposed § 1026.19(e)(4)(ii).

Accordingly, the Bureau is revising the text of proposed § 1026.19(e)(4)(ii) and comment 19(e)(4)-2, renumbered as 19(e)(4)(ii)-1. As adopted, § 1026.19(e)(4)(ii) provides that the creditor shall not provide a revised version of the disclosures required under § 1026.19(e)(1)(i) on or after the date on which the creditor provides the disclosures required under § 1026.19(f)(1)(i). Section 1026.19(e)(4)(ii) also provides that the consumer must receive a revised version of the disclosures required § 1026.19(e)(1)(i) not later than four business days prior to consummation. The Bureau believes that this addresses the regional bank holding company commenter's concern with the proposal that a consumer could receive the Loan Estimate and the Closing Disclosure simultaneously. Lastly, § 1026.19(e)(4)(ii) provides that if the revised version of the disclosures required under § 1026.19(e)(1)(i) is not provided to the consumer in person, the consumer is considered to have received such version three business days after the creditor delivers such version or places such version in the mail. This aspect of § 1026.19(e)(4)(ii) mirrors § 1026.19(e)(1)(iv). Accordingly, comment 19(e)(4)(ii)-1 references comments 19(e)(1)(iv)-1 and -2. The Bureau adopts § 1026.19(e)(4)(ii) and comment 19(e)(4)(ii)-2 pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

19(f) Mortgage Loans Secured by Real Property—Final Disclosures

As discussed in the section-by-section analysis of § 1026.19 above, the disclosure requirements prior to consummation of a closed-end credit transaction under TILA apply only to creditors. For certain mortgage transactions, TILA requires creditors to furnish a corrected disclosure to the consumer not later than three business days before the date of consummation of the transaction if the prior disclosed APR has become inaccurate. *See* 15 U.S.C. 1638(b)(2)(A), (D). In contrast, RESPA generally applies to lenders and settlement agents. RESPA requires the person conducting the settlement (*e.g.*, the settlement agent) to complete a settlement statement and make it available for inspection by the borrower at or before settlement. *See* 12 U.S.C. 2603(b). RESPA also provides that, upon the request of the borrower, the person who conducts the settlement must permit the borrower to inspect those items which are known to such person on the settlement statement during the business day immediately preceding the day of settlement. *Id.*

Regulation Z implements TILA's requirement that the creditor deliver corrected disclosures and currently provides that, if the annual percentage rate disclosed in the early TILA disclosure becomes inaccurate, the creditor shall provide corrected disclosures with all changed terms. *See* 12 CFR 1026.19(a)(2)(ii). Regulation Z further provides that the consumer must receive the corrected disclosures no later than three business days before consummation. *Id.* Regulation X provides that the settlement agent shall permit the borrower to inspect the RESPA settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. *See* 12 CFR 1024.10(a).

As noted above, section 1032(f) of the Dodd-Frank Act provides that the Bureau shall propose for public comment rules that combine the disclosures required under TILA and sections 4 and 5 of RESPA. In addition, sections 1098 and 1100A of the Dodd-Frank Act amended RESPA section 4(a) and TILA section 105(b), respectively, to require that the Bureau establish the integrated disclosure requirements for "mortgage loan transactions" that are "subject to both or either provisions of" RESPA sections 4 and 5 (the RESPA GFE and RESPA settlement statement requirements) and TILA. *See* 12 U.S.C. 2604(a); 15 U.S.C. 1604(b). As noted above, although Congress mandated that the Bureau integrate the rules under TILA and RESPA, it did not reconcile the timing requirements or the division of responsibilities between the creditor and settlement agent in TILA and RESPA.

In general, the proposed rule would have required that consumers receive the Closing Disclosure three business days before consummation in all circumstances and that, if any revisions were made to the Closing Disclosure before consummation, consumers would receive a revised Closing Disclosure that would have triggered an additional three-business-day waiting period, subject to several limited exceptions. Those exceptions would have included changes made due to consumer-seller negotiations, changes to reflect refunds curing violations of the good faith analysis at proposed § 1026.19(e)(3), and changes in which the amount actually paid by the consumer at closing does not exceed $100. The Bureau also would have included a limited waiver provision that would have allowed consumers to waive or modify the timing requirements in cases involving a bona fide personal financial emergency.

In response to public comment, the final rule narrows the circumstances in which changes that occur between initial provision of the Closing Disclosure and consummation would trigger a new three-business-day waiting period. These changes are discussed in more detail below in the section-by-section analyses of § 1026.19(f)(1)(ii) and (f)(2).

The proposed rule also set forth two alternative requirements for who would be responsible for providing the Closing Disclosure. Under alternative 1, the creditor would have been solely responsible for providing the Closing Disclosure. Under alternative 2, the creditor would have been responsible for providing the Closing Disclosure, but would have been expressly permitted to share responsibility with a settlement agent. Settlement agents would have been required to comply with the provisions of § 1026.19(f) and the creditor would have been responsible for ensuring the requirements of § 1026.19(f) have been satisfied. In response to comments, the Bureau is finalizing alternative 2, as discussed in more detail in the section-by-section analysis of § 1026.19(f)(1)(v) below.

The Bureau received extensive public comment on the proposed rules for the delivery of the Closing Disclosure. In general, commenters focused on the proposed timing and responsibility for providing the Closing Disclosure. The vast majority of commenters were concerned the Bureau's proposed timing requirements would delay most or a large percentage of transactions. Commenters also provided extensive feedback on whether the creditor or settlement agent should bear responsibility for preparing and delivering the Closing Disclosure. The Bureau also received comment on other aspects of proposed § 1026.19(f), as described more fully below in their respective sections. The final rule revises the proposal in response to these comments, as described throughout this section.

19(f)(1) Provision of Disclosures

19(f)(1)(i) Scope

As discussed above, the integrated disclosure mandate requires the Bureau to reconcile several aspects of the disclosure requirements under TILA and RESPA. Thus, pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1032(f) of the Dodd-Frank Act, the Bureau proposed to integrate the disclosure requirements in TILA section 128 and RESPA section 4 in § 1026.19(f)(1)(i). This section would have provided that, in a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the credit transaction. Proposed comment 19(f)(1)(i)-1 would have provided illustrative examples of this provision.

Comments

As noted above and discussed in greater detail in § 1026.19(f)(1)(ii)(A) below, the Bureau received extensive public comment regarding the timing requirements for delivery of the Closing Disclosure. Among other things, many commenters from across the real estate and mortgage lending industries were concerned that a general requirement to disclose the "actual terms" of the transaction to the consumer three business days before consummation would prove impracticable because many costs are not known by that time. Commenters also observed that the proposed delivery rules, which would have created a presumption that the consumer received the Closing Disclosure three business days after it was placed in the mail, would have required that creditors and settlement agents disclose a large amount of information on the Closing Disclosure at least six business days, and possibly more, before consummation. Commenters further explained that information required to be disclosed on the Closing Disclosure derives from many sources, including settlement agents and other settlement service providers, and that creditors frequently do not select settlement service providers.

Both creditor and settlement agent commenters were concerned that they could not guarantee that the "actual terms" of the transaction could be provided three business days before consummation in every case. Commenters also were concerned that a requirement to disclose the "actual terms" of the transactions before consummation would delay closings because creditors would not provide the Closing Disclosure until all parties have finalized their information. Because settlement costs currently are not disclosed to borrowers until the day before or the day of settlement on the RESPA settlement statement, industry commenters were concerned about the feasibility of providing the "actual terms" of the transaction before consummation, notwithstanding the proposed exceptions for consumer-seller negotiations, tolerance cures, and $100 or less increase in the cash to close amount. Commenters were concerned that the proposed exceptions would be too narrow to account for the many reasons closing costs could change before consummation, and that the need for revisions would arise inevitably, triggering a series of three-business-day waiting periods.

Settlement agent commenters recommended that the Bureau integrate the final TILA disclosure with the RESPA settlement statement by cross-referencing in Regulation Z certain RESPA-related disclosure requirements in Regulation X.[213] A trade association representing the settlement agent and title insurance industry recommended that the final rule divide the Closing Disclosure requirements among Regulation Z and Regulation X, as a modification to one of the alternatives proposed by the Bureau with respect to who would be responsible for providing the Closing Disclosure. The commenter submitted draft language for the Bureau to consider adopting in the final rule.

Final Rule

Actual terms. The Bureau believes consumers must receive accurate information about the actual terms of their transactions. The Bureau also appreciates that some information about the transaction may not be known with certainty three business days before consummation. The Bureau further understands that consumers and other parties may face costs if closings are delayed, as discussed in greater detail in the section-by-section analyses of § 1026.19(f)(1)(ii)(A) and (f)(2) below. From the extensive public comments it received on this aspect of the proposal, the Bureau understands that creditors and settlement agents obtain transaction cost information from a wide variety of sources and third parties. The Bureau understands that some costs may

[213] Although commenters provided these comments in response to the Bureau's proposal for which party would be responsible for providing the Closing Disclosure, discussed in more detail in the section-by-section analysis of § 1026.19(f)(1)(v) below, the Bureau is addressing them here because they implicate the decision to integrate the disclosures in § 1026.19(f).

only be known before or even after consummation. In light of these concerns, the final rule clarifies the requirements in § 1026.19(f) with respect to the accuracy of the information contained in the Closing Disclosure provided three business days before consummation, as discussed in more detail below, and with respect to changes that may occur before and after consummation, as discussed in the section-by-section analyses of § 1026.19(f)(1)(ii)(A) and (f)(2) below.

Final § 1026.19(f)(1)(i) is adopted as proposed with a technical revision to the heading of § 1026.19(f)(1). Final § 1026.19(f)(1)(i) provides that, in a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the transaction.

Proposed comment 19(f)(1)(i)-1 is adopted substantially as proposed, with revisions to conform to the final rule. The Bureau recognizes that changes may occur after the Closing Disclosure is first provided three business days before consummation. Accordingly, comment 19(f)(1)(i)-1 states that if the disclosures provided pursuant to § 1026.19(f)(1)(i) do not contain the actual terms of the transaction, the creditor does not violate § 1026.19(f)(1)(i) if the creditor provides corrected disclosures that contain the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements in § 1026.19(f)(1)(ii) and (f)(2). The comment includes a reference to the timing requirements of § 1026.19(f)(2) because that provision, as revised, includes timing and delivery requirements applicable to changes that may occur after the Closing Disclosure is first provided under § 1026.19(f)(1)(ii)(A) three business days before consummation. See the section-by-section analysis of final § 1026.19(f)(2) for a discussion of these redisclosure requirements.

The final rule also amends the example in the final sentence of proposed comment 19(f)(1)(i)-1 to reflect revisions made in the final rule to address changes that may be made before consummation without triggering additional three-business-day waiting periods under § 1026.19(f)(2). Specifically, the comment includes an example in which the consumer adds a mobile notary service after the creditor provides the Closing Disclosure, which requires that the creditor provide corrected disclosures at or before consummation, pursuant to § 1026.19(f)(2)(i). In addition, comment 19(f)(1)(i)-1 refers to "corrected disclosures" rather than "new disclosures" to reflect the terminology currently used with respect to the final TILA disclosures in Regulation Z and for greater consistency throughout § 1026.19(f).

Best information reasonably available standard. As discussed in more detail in the section-by-section analyses of § 1026.19(f)(1)(ii)(A), (f)(2)(i), and (f)(2)(ii), the Bureau recognizes that the Closing Disclosure provided to consumers three business days before consummation pursuant to § 1026.19(f)(1)(ii)(A) may require revisions, and that creditors may face compliance difficulties providing the "actual terms" of the transaction three business days before consummation. Accordingly, as discussed in more detail below, the final rule clarifies the accuracy standards applicable to the Closing Disclosure provided three business days before consummation.

While the Bureau acknowledges that the Closing Disclosure provided three business days before consummation may require subsequent revisions, the Bureau does not expect revisions will be made to terms that will impose significant, long-term costs to consumers. First, the final rule expands the zero percent tolerance category that applies to the estimated charges under § 1026.19(e) from the category that is applicable to the RESPA GFE under current Regulation X to include charges paid to affiliates of the creditor or a mortgage broker and charges for which the consumer cannot shop for the service provider, as discussed in the section-by-section analysis of § 1026.19(e)(3) above. Second, the final rule imposes redisclosure requirements resulting in a new three-business-day waiting period for certain changes to the APR, loan product, and prepayment penalties, discussed in the section-by-section analysis of § 1026.19(f)(2) below. With respect to revisions resulting from the consumer's participation in the transaction, such as third-party services that the consumer shops for independently (*e.g.*, owner's title insurance), the Bureau believes the consumer will be aware of cost increases associated with such services. In addition, to the extent changes occur between the time the Closing Disclosure is first provided and consummation that may affect the Cash to Close disclosure under § 1026.38, the Bureau believes creditors and settlement agents will have an incentive to keep consumers informed of such changes to ensure the efficient operation of closings. In addition, the Bureau believes the final rule will provide industry with additional incentive to ensure consumers receive disclosures that are as accurate as possible at the time they are provided to minimize subsequent revisions.

The accuracy standards with respect to the final TILA disclosures and the RESPA settlement statement currently differ under Regulation X and Regulation Z. RESPA section 4 requires that the RESPA settlement statement itemize all charges imposed upon the borrower and the seller, and current Regulation X § 1024.8(b)(1) requires the disclosure of the "actual charges" paid by the borrower and seller. However, Regulation Z currently accounts for the practical difficulties that creditors may face in providing information on disclosures delivered before consummation. Regulation Z § 1026.17 contains general disclosure requirements applicable to closed-end transactions, including mortgage loans. Section 1026.17(c)(2)(i) states that, "[i]f any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and shall state clearly that the disclosure is an estimate." Comments 17(c)(2)(i)-1, -2, and -3 contain guidance explaining the application of the best information reasonably available standard.

While the Bureau did not propose to amend the text of § 1026.17(c)(2)(i), it did propose amendments to the commentary of that section to clarify the applicability of the best information reasonably available standard to the particular estimation and redisclosure requirements of § 1026.19(e) and (f). For example, as discussed in the section-by-section analysis of § 1026.17(c)(2)(i), proposed comment 17(c)(2)(i)-1 would have added a clause to the first sentence of the comment that states, "[e]xcept as otherwise provided in §§ 1026.19, 1026.37, and 1026.38, disclosures" may be estimated when the exact information is unknown at the time disclosures are made. Proposed comment 17(c)(2)(i)-1 also would have added a sentence to the end of the existing comment that states, "[f]or purpose of § 1026.17(c)(2)(i), creditors must provide the actual amounts of the information required to be disclosed pursuant to § 1026.19(e) and (f), subject to the estimation and redisclosure rules in those provisions." Thus, creditors would have had to disclose the actual terms of the transaction for the disclosures under § 1026.19(f), including for disclosures provided three business days before consummation. Proposed comment 17(c)(2)(i)-2 (labeling estimates) would have added a sentence to the current comment to clarify that, for disclosures required by § 1026.19(e), use of the Loan Estimate form H-24 of appendix H, pursuant to § 1026.37(o), satisfies the requirement that the disclosure state clearly that the disclosure is an estimate, and that "for all other disclosures," creditors have flexibility in labeling estimates.

The Bureau believes the actual charges standard applicable to the RESPA settlement statement under Regulation X and the best information reasonably available standard generally applicable to closed-end disclosures provided before consummation under Regulation Z must be reconciled to integrate the disclosure requirements of RESPA and TILA. Accordingly, the final rule revises proposed comment 17(c)(2)(i)-1 to clarify that the best information reasonably available standard applies to the Closing Disclosure in certain circumstances. In addition, as discussed below, the final rule includes comment 19(f)(1)(i)-2, which is similar to the commentary generally applicable to § 1026.17(c)(2)(i), but differs in certain respects.

Comment 17(c)(2)(i)-1 explains that creditors may estimate when the exact information is unknown to the creditor at the time disclosures are made, and that information is unknown if it is not reasonably available to the creditor at the time the disclosures are made. Comment 19(f)(1)(i)-2 is substantially similar, but uses the phrase “actual term” instead of “exact information” to reflect the requirements of § 1026.19(f)(1)(i) that the creditor provide the consumer with disclosures in § 1026.38 reflecting the “actual terms” of the transaction. Because the best information reasonably available standard applies to the Closing Disclosure when it is provided three business days before consummation, comment 19(f)(1)(i)-2 provides that creditors may estimate disclosures provided under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii) when the actual term is unknown to the creditor at the time disclosures are made, consistent with § 1026.17(c)(2)(i).

Like comment 17(c)(2)(i)-1, comment 19(f)(1)(i)-2.i explains that the “reasonably available” standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. An actual term is unknown only if it is not “reasonably available” to the creditor at the time the disclosures are made, and the “reasonably available” standard requires that the creditor, acting in good faith, exercise due diligence in obtaining the information.

The due diligence requirement is a critical element of the best information reasonably available standard. The Bureau expects creditors will conduct due diligence, and coordinate with settlement agents and other parties as necessary, to obtain information about the terms of the consumer's transaction so that the consumer receives a reliable Closing Disclosure three business days before consummation.

To clarify the due diligence requirement, comment 19(f)(1)(i)-2.i includes guidance similar to comment 17(c)(2)(i)-1 with respect to how a creditor exercises due diligence in obtaining information. Unlike comment 17(c)(2)(i)-1, comment 19(f)(1)(i)-2.i includes settlement agents as an additional example of a third-party source the creditor may rely on in obtaining information. The comment includes this example because the Bureau understands that creditors are likely to rely on settlement agents for many types of information that must be provided in the Closing Disclosure. Thus, the comment illustrates that creditors might look to a settlement agent for homeowners association dues or other information in connection with a real estate settlement. This comment is intended to be illustrative and not exhaustive of the types of parties or information that a creditor might consult in performing due diligence.

If the creditor does not itself have the information regarding the actual terms, such as for the disclosures under § 1026.38(j) and (k), the creditor may rely on a third party settlement agent for the transaction in obtaining information regarding the actual terms of the transaction. The creditor would not be considered to have conducted due diligence if the creditor did not attempt to obtain such information from the settlement agent. In such case, the creditor would not be permitted to use an estimate for the disclosure provided under § 1026.19(f)(1)(ii)(A).

Comment 19(f)(1)(i)-2.i includes examples illustrating how a creditor exercises due diligence for purposes of § 1026.19(f)(1)(i). Comment 19(f)(1)(i)-2.i.A includes an example in which a creditor does not exercise due diligence in connection with the cost of the lender's title insurance policy to be purchased by the consumer. Comment 19(f)(1)(i)-2.i.B includes an example in which a creditor has exercised due diligence in connection with amounts disclosed under § 1026.38(j) and (k) because it bases disclosures on information about the consumer's transaction obtained from the settlement agent.

Like comment 17(c)(2)(i)-1, comment 19(f)(1)(i)-2.ii clarifies that, if an actual term is unknown, the creditor may use estimates in making disclosures even though the creditor knows that more precise information will be available at or before consummation. Similar to comment 17(c)(2)(i)-1, comment 19(f)(1)(i)-2 highlights the creditor's obligations to make subsequent disclosures. Comment 19(f)(1)(i)-2.ii specifically discusses the creditor's obligations to provide corrected disclosures at or before consummation containing the actual terms of the transaction under § 1026.19(f)(2), subject to the exceptions provided for in § 1026.19(f)(2).

Comment 19(f)(1)(i)-2 does not state that the creditor must label disclosures based on the best information reasonably available as estimates. Instead, comment 19(f)(1)(i)-2.ii clarifies that the labeling rules under § 1026.38 apply to the Closing Disclosures with a reference to comment 17(c)(2)(i)-2 to direct creditors to guidance on labeling estimates. The disclosure requirements in § 1026.38 generally do not permit creditors to label disclosures on the Closing Disclosure as estimates because creditors are required to use the master headings, headings, subheadings, labels, and designations required by that section.

The Bureau is aware that other disclosures provided under Regulation Z are labeled as estimates when information is unknown. However, the Bureau is concerned that labeling certain items on the Closing Disclosure as estimates may result in consumer confusion regarding the nature of the Closing Disclosure. In addition, the Closing Disclosure uses the term "estimated" in specific areas to inform the consumer when certain recurring costs may change in the future, such as future payments for taxes and property insurance. The Bureau believes the intended meaning of the term "estimated" for those disclosures may be affected by use of that term in other places on the Closing Disclosure form. Further, at the Bureau's Quantitative Study, consumer participants using the Closing Disclosure performed statistically significantly better at understanding their final loan terms and costs than consumer participants using the current RESPA settlement statement and final TILA disclosure. *See* Kleimann Quantitative Study Report at 68-69.

The Bureau notes that under § 1026.19(f)(2)(i) and (ii), creditors must provide corrected disclosures if information on disclosures provided under § 1026.19(f)(1)(i) becomes inaccurate. Thus, consumers will receive by consummation corrected disclosures stating the actual terms of the transaction. In addition, under final § 1026.19(f)(2)(iii), consumers will receive corrected disclosures after consummation if a subsequent event changes an amount actually paid by the consumer during the 30-day period following consummation. This approach is consistent with what the Bureau believes is the current practice under Regulation X, which provides that the RESPA settlement statement must state the actual charges paid by the borrower and seller, and does not provide for labeling charges as estimates, even if the RESPA settlement statement is subsequently revised.

Unlike comment 17(c)(2)(i)-1, comment 19(f)(1)(i)-2.iii explains how the best information reasonably available standard applies if a settlement agent provides certain disclosures under § 1026.19(f)(1)(i) instead of a creditor, pursuant to § 1026.19(f)(1)(v). As discussed in the section-by-section analysis of § 1026.19(f)(1)(v), a settlement agent may provide a consumer with the Closing Disclosure, provided the settlement agent complies with all relevant requirements of § 1026.19(f). Comment 19(f)(1)(i)-2.iii is intended to illustrate the applicability of the best information reasonably available standard to provisions as applied to settlement agents providing the Closing Disclosure three business days before consummation.

Comment 19(f)(1)(i)-2.iii explains that the settlement agent normally may rely on the representations of other parties in obtaining information, but the settlement agent also must satisfy the "best information reasonably available" standard. Accordingly, the settlement agent is required to exercise due diligence to obtain information if it is providing the Closing Disclosure pursuant to § 1026.19(f)(1)(v). Comment 19(f)(1)(i)-2.iii illustrates a scenario in which the settlement agent is considered to have conducted due diligence if it obtained from the creditor information for the loan terms table required to be disclosed under § 1026.38(b).

As discussed in the section-by-section analysis of § 1026.19(f)(1)(v), even if the settlement agent provides the Closing Disclosure, the creditor remains responsible under § 1026.19(f)(1)(v) for ensuring that the Closing Disclosure is provided in accordance with § 1026.19(f). Comment 19(f)(1)(v)-3 explains that the creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor. Comment 19(f)(1)(i)-2.iii references this obligation and includes a cross-reference to comment 19(f)(1)(v)-3.

Denied or withdrawn applications. As discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(B) below, a trade association representing the timeshare industry requested that the final rule include commentary clarifying that, if the consumer's application will not or cannot be approved on the terms requested or the consumer has withdrawn the application, the Closing Disclosure is not required. Although the commenter provided this recommendation in the context of timeshare transactions, the Bureau believes such guidance would be helpful as applied to all transactions subject to § 1026.19(f). Thus, as discussed below, the final rule includes comment 19(f)(1)(i)-3 to provide guidance for such situations, which reflects similar guidance applicable to the Loan Estimate.

Under § 1026.19(f)(1)(i), the creditor must provide a Closing Disclosure reflecting "the actual terms of the transaction." Additionally, under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii), the Closing Disclosure must be provided three business days before consummation; under § 1026.19(f)(2)(i), the Closing Disclosure must be provided at or before consummation; and for loans secured by timeshares under § 1026.19(f)(1)(ii)(B), creditors must ensure that the consumer receives the Closing Disclosure no later than consummation. If the consumer's application for credit is denied or withdrawn before the creditor provides the Closing Disclosure under § 1026.19(f)(1)(ii)(A), (f)(1)(ii)(B), (f)(2)(i), or (f)(2)(ii), creditors would be unable to disclose "the actual terms of the transaction," and providing a Closing Disclosure in such cases would provide relatively little consumer benefit.

In other cases, an application may be denied or withdrawn after the three-business-day deadline by which the Closing Disclosure must be provided under § 1026.19(f)(1)(ii)(A) and, as applicable, § 1026.19(f)(2)(ii). In these cases, however, the denial or withdrawal of an application that may occur subsequent to the three-business-day deadline does not excuse a creditor's obligation to provide the Closing Disclosure by that deadline. Where the consumer is considering whether to withdraw a credit application in the days before consummation, the consumer's receipt of the Closing Disclosure three business days before consummation would provide critical information about whether it is in the consumer's interest to proceed with the transaction.

Accordingly, comment 19(f)(1)(i)-3 clarifies that the creditor is not required to provide the disclosures required under § 1026.19(f)(1)(i) if, before the time the creditor is required to provide the disclosures under § 1026.19(f), the creditor determines the consumer's application will not or cannot be approved on the terms requested, or the consumer has withdrawn the application, and, as such, the transaction will not be consummated. The comment also includes a cross-reference to comment 19(e)(1)(iii)-3, which provides examples in which an application will not or cannot be approved on the terms requested or has been withdrawn by the consumer.

Integration of Closing Disclosure requirements in Regulation Z. Section 1032(f) of the Dodd-Frank Act generally requires that the Bureau propose rules and model disclosures that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. In addition, Dodd-Frank Act sections 1098 and 1100A amended section 105(b) of TILA and section 4(a) of RESPA to require the integration of the TILA disclosures and the disclosures required by sections 4 and 5 of RESPA. Although Congress imposed this integrated disclosure requirement, it did not harmonize the underlying statutes, as discussed in greater detail in the Legal Authority discussion in part IV above. Thus, to meet the Dodd-Frank Act's express requirement to integrate the disclosures required by TILA and RESPA, the Bureau must reconcile the differences between these two statutes.

The Bureau understands the concerns raised by commenters with respect to placing the requirements regarding disclosure of settlement charge information, which is traditionally considered to be only RESPA-required information, in Regulation Z. However, the Bureau believes it is appropriate to integrate the requirements of RESPA and TILA into a single Closing Disclosure set forth in Regulation Z. Section 1419 of the Dodd-Frank Act amended TILA by adding section 128(a)(17), which generally requires creditors to disclose the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. The items included in this amendment are nearly all of the items that are included on the RESPA settlement statement. Accordingly, creditors would have to include in the TILA disclosures information that was traditionally known only to settlement agents in advance of consummation. Although TILA section 128(a)(17) requires that creditors disclose aggregate information, to meaningfully implement this requirement, the Bureau believes it is reasonable to require that creditors base such disclosure on the specific elements comprising the aggregate figure. Accordingly, and in light of the integration mandate, the Bureau believes it is appropriate to integrate the specific requirements of RESPA and Regulation X into Regulation Z.

In addition, the Bureau believes there are substantial practical benefits to locating the disclosure requirements in Regulation Z, including the benefits of facilitating industry compliance and improving consumer comprehension. The Closing Disclosure was subjected to extensive consumer testing as a single, integrated document. Were the Closing Disclosure divided as separate documents based on disparate requirements located in Regulation X and Regulation Z, there is risk that consumers would receive different parts of the Closing Disclosure at different times, which the Bureau believes would undermine consumer comprehension. Even if the rule were to require that the information be provided to consumers by the same deadline, there is a risk that consumers would receive separate, disjointed disclosures at separate times if, for example, parties providing the disclosures used different delivery services. Accordingly, the Bureau believes it is necessary to ensure that consumers receive the Closing Disclosure as a single, integrated document.

The Bureau believes ensuring consumer comprehension requires that the information in the Closing Disclosure be disclosed and delivered in a consistent manner. The Closing

Disclosure was designed to facilitate the consumer's comparison of terms disclosed in the Loan Estimate. As a result, a number of the disclosure requirements applicable to the Closing Disclosure set forth in § 1026.38 cross-reference the disclosure requirements applicable to the Loan Estimate set forth in § 1026.37, rather than setting forth their own requirements.[214] This approach helps ensure consumers can easily compare the Closing Disclosure against the Loan Estimate. To this end, the Bureau believes the Closing Disclosure should be subject to rules relying on a single set of terminology, timing requirements, recordkeeping requirements, and a consistent set of other general disclosure requirements and commentary.

The Bureau believes the final rule will facilitate compliance because it will obviate potential conflicts between Regulation X and Regulation Z that might otherwise arise. For example, as described in more detail above, § 1026.19(f)(1)(i) clarifies the applicability of the best information reasonably available standard set forth in the general disclosure requirements applicable to closed-end consumer credit transactions under § 1026.17(c)(2)(i), and § 1026.17 contains a number of other general disclosure requirements that address compliance questions raised by commenters, such as questions about delivery requirements in the case of multiple consumers. *See* section-by-section analysis of § 1026.19(f)(1)(iii) below; § 1026.17(d) (providing disclosures in the case of multiple consumers). Regulation Z also contains extensive commentary that interprets many of the provisions of Regulation Z, including the general disclosure requirements in § 1026.17. The Bureau believes this extensive commentary will assist industry in complying with the final rule. By contrast, locating certain Closing Disclosure

[214] *See, e.g.*, § 1026.38(a)(5) (loan information disclosures requiring disclosure of the information required to be disclosed under § 1026.37(a)(8) through (11)); § 1026.38(c) (projected payment disclosures requiring disclosure of the information required to be disclosed under § 1026.37(c)); § 1026.38(f) (closing loan cost information described in § 1026.37(f)(1) and (3), and the total of loan costs based, *inter alia*, on such disclosures).

requirements in Regulation X, with other information in Regulation Z, likely would present compliance difficulties for creditors and settlement agents. Because the Loan Estimate requirements will be located in Regulation Z, and because elements of the Closing Disclosure cross-reference elements of the Loan Estimate, creditors or settlement agents would be required to regularly consult Regulation Z. The Bureau is concerned that compliance with two sets of regulations for one disclosure would increase the risk of inconsistencies.

One trade association representing settlement agents and the title insurance industry implied that the Bureau could resolve any such discrepancies by including a provision in Regulation X stating that, for loans subject to § 1026.19(e) and (f), the definitions and rules of construction of Regulation Z would control, to the extent of any inconsistency. This commenter also recommended that the Closing Disclosure provisions in Regulation X cross-reference applicable Loan Estimate requirements located in Regulation Z. However, the Bureau does not believe such an approach will facilitate compliance, which is one of the purposes of the integrated disclosures. *See* Dodd-Frank Act sections 1098, 1100A. Because many of the individual elements of the Closing Disclosure cross-reference the Loan Estimate, and because the timing, delivery, and other general disclosure standards applicable to the Closing Disclosure rely on definitions and other provisions located in Regulation Z, coordination with Regulation Z would be unavoidable. The Bureau is concerned that separating the disclosure requirements between Regulation Z and Regulation X would foster confusion and inefficiencies, while not facilitating compliance with the disclosure requirements. *See* Dodd-Frank Act sections 1098, 1100A. For example, while the approach preferred by commenters may reconcile differences in terminology, the Bureau does not believe it would reconcile other differences, such as the general disclosure requirements in § 1026.17.[215]

The Bureau believes integrating the Closing Disclosure requirements in Regulation Z also satisfies the Dodd-Frank Act integration mandate. To meet the integration mandate, the Bureau must reconcile several important differences between RESPA and TILA. For example, to reconcile the different timing requirements under RESPA and TILA with respect to when the Closing Disclosure must be provided, the final rule generally requires that the Closing Disclosure be provided three business days before "consummation." Regulation Z currently defines "consummation" as "the time that a consumer becomes contractually obligated on a credit transaction." *See* § 1026.2(a)(13). Regulation X, by contrast, provides that the RESPA settlement statement must be delivered by "settlement," which is defined as "the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan." *See* 12 CFR 1024.2(b). As noted by commenters representing the views of settlement agents, discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), "consummation" and "settlement" may not necessarily occur at the same time. To ensure consumers consistently receive a single, integrated Closing Disclosure in a timely manner, the Bureau believes it must reconcile these differences. Accordingly, as discussed in more detail in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), the final rule requires that the Closing Disclosure be received three business days before "consummation." Thus, as described above, the Bureau believes integrating the TILA and RESPA requirements applicable to the Closing Disclosure in § 1026.19(f)(1)(i) will satisfy TILA, RESPA, and the Dodd-Frank Act's

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[215] The commenter recommending this approach, in which the settlement agent would provide elements of the Closing Disclosure contained in Regulation X, explained that doing so would facilitate industry compliance and enhance consumer understanding. The Bureau has addressed settlement agent responsibility for the Closing Disclosure in the section-by-section analysis of § 1026.19(f)(1)(v).

integration mandate, will facilitate industry compliance, and will enhance consumers' understanding of their transactions.

Comments related to the integration of particular disclosure requirements are addressed where applicable below in the section-by-section analysis of § 1026.38. Comments related to liability issues raised by integrating the Closing Disclosure requirements in Regulation Z are addressed in the beginning of part V above. The final rule makes certain amendments to the proposal in response to comments regarding the timing and delivery requirements applicable to the Closing Disclosure, as discussed in greater detail throughout the section-by-section analysis of § 1026.19(f) below.

Final provisions. For the reasons discussed above, and based on the authority cited in the proposal as well as sections 1098 and 1100A of the Dodd-Frank Act, the final rule integrates the disclosure requirements in TILA section 128 and RESPA section 4 in final § 1026.19(f), as proposed. The final rule adopts the language in proposed § 1026.19(f)(1)(i) as proposed, with a technical revision to the heading of § 1026.19(f)(1). The final rule adopts proposed comment 19(f)(1)(i)-1 substantially as proposed, and adopts new comments 19(f)(1)(i)-2 and -3 pursuant to the Bureau's authority under sections 105(a) of TILA, 19(a) of RESPA, and sections 1098, 1100A and 1032(f) of the Dodd-Frank Act.

19(f)(1)(ii) Timing

19(f)(1)(ii)(A) In General

The Bureau explained in the proposal that the integrated disclosure mandate requires the Bureau to reconcile two statutory timing regimes that are currently not synchronized. The Bureau explained that the determination of how to integrate these conflicting statutory provisions also must be made in light of section 1405(b) of the Dodd-Frank Act, which focuses on improving “consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures.” The Bureau recognized in the proposal that consumers may be more aware of and better understand their transactions if consumers receive the disclosures reflecting all of the terms and costs associated with their transactions three business days before consummation. The Bureau explained that this would afford consumers sufficient time to review, analyze, and question the information reflected in the disclosure, such that consumers are aware of and understand the transactions by the time consumers become obligated.

The Bureau also explained that if consumers receive the disclosures three business days before consummation, they would have sufficient time to identify and correct errors, discuss and negotiate cost increases, and have the necessary funds available. The Bureau expected that this also could eliminate the opportunity for bad actors to surprise consumers with unexpected costs at the closing table, when consumers are committed to going through with the transaction. Further, the Bureau explained that providing consumers with more time to review the Closing Disclosure may encourage creditors to take greater care to ensure the accuracy of the Loan Estimate. The Bureau noted that while the proposal’s expanded Loan Estimate tolerances would reduce the likelihood of such tactics, requiring advance disclosure of the Closing Disclosure would make it easier for consumers to identify any changes and provide additional incentive for creditors to avoid such changes.

The Bureau acknowledged that a three-business-day period could result in closing delays, which would impose costs on some consumers. The Bureau also noted that, in extreme situations, such delays could cause a transaction to fall through if a consumer is under a contractual obligation to close by a certain date. The Bureau reasoned, however, that creditors and settlement agents currently coordinate to provide the RESPA settlement statement at closing and that these parties would have an incentive to complete closings as scheduled, and therefore the Bureau believed that they would adjust their business practices to provide the Closing Disclosure in a timely manner, making closing delays infrequent. The Bureau also noted that delayed or canceled closings could impose costs on covered persons as well, such as a loss in revenue for transactions that fall through due to a delay. The Bureau also noted that the proposed rule could create legal and reputational risks for creditors or settlement agents that are unable to close loans as planned.

Section 105(a) of TILA authorizes the Bureau to modify and add requirements under certain circumstances, and the Bureau stated its belief that requiring redisclosure in cases where it is not currently required under Regulation Z or Regulation X is necessary to effectively integrate the disclosures. Accordingly, the Bureau proposed § 1026.19(f)(1)(ii)(A), which would have provided that, except for transactions secured by timeshares, or as provided under proposed § 1026.19(f)(2), the creditor shall ensure that the consumer receives the disclosures no later than three business days before consummation. Pursuant to proposed § 1026.2(a)(6), the definition of "business day" that would have applied to § 1026.19(f)(1)(ii) would have been the specific definition that also applies to the right of rescission under § 1026.23: a business day would include all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

Proposed comment 19(f)(1)(ii)-1 would have provided illustrations of this requirement. Proposed comment 19(f)(1)(ii)-2 would have explained the requirement that consumers must receive disclosures no later than three business days in advance of consummation, and would have provided practical examples illustrating appropriate delivery methods.

Comments

The Bureau received extensive public comment and ex parte submissions regarding the timing of the Closing Disclosure's delivery requirements. Some industry commenters representing views from across the real estate market[216] and some individual consumers expressed support for a general three-business-day disclosure requirement. These commenters explained that a general three-business-day period would provide consumers an opportunity to review documents, ask questions, negotiate to reduce costs, gather necessary funds, transfer funds to the settlement agent, and reduce opportunity for bait-and-switch tactics. Settlement agents and attorney commenters explained that a general three-business-day requirement also would provide settlement agents more time to prepare settlement documents in an unpressured environment.

A variety of settlement agent commenters and an individual consumer explained that consumers are sometimes surprised at the closing table when they discover important changes to their loan terms, such as the discovery that they are receiving an adjustable rate mortgage loan rather than a fixed rate loan, or an adjustable rate mortgage loan with different loan terms than what they anticipated. Settlement agent commenters explained that a general three-business-day period would allow consumers to review the Closing Disclosure with an attorney or another advisor. Some of these commenters, however, expressed concern about triggering an additional waiting period as a result of redisclosing the Closing Disclosure and about how the Bureau's proposal would interact with other rules. Comments relating to the circumstances under which revisions to the Closing Disclosure would trigger an additional waiting period are discussed in

[216] Commenters included title and insurance companies, settlement agents, law firms, mortgage brokers, attorneys, a large bank, community banks, and trade associations representing creditors, attorneys, and settlement agents.

more detail in the section-by-section analysis of § 1026.19(f)(2) below.

Commenters who represent consumer interests supported the three-business-day requirement. Two consumer advocacy groups submitting a joint comment supported the Bureau's proposal. A housing counseling agency noted that a mandatory period would address a common consumer complaint that refinancing settlements are frequently rushed. A State attorney general stated that a three-business-day period was necessary for consumers to consider all of the costs in light of the significant obligation assumed by the consumer in a mortgage transaction, particularly in the context of purchasing a home. Several associations of State banking regulators submitting a joint comment also supported a general three-business-day requirement, explaining that the three-business-day requirement would create consistency where there was a discrepancy between RESPA and TILA. This commenter noted that the proposed changes to the disclosures were perhaps the most sweeping and significant reform to the mortgage origination process in recent history, but cautioned that careful and coordinated implementation was essential to avoiding potentially significant market disruption.

However, many commenters from across the mortgage and real estate industry and a Federal agency opposed a general three-business-day disclosure requirement, arguing that providing "final" settlement costs three business days before consummation would be impracticable, unnecessary, and result in frequent closing delays that would impose costs on consumers, sellers, industry, and the market. Commenters explained that certain settlement costs were unknown three to six days in advance and usually are not known until a day or two before closing.[217] A community bank representative stated that, while it would be feasible to prepare a

[217] Commenters observed that they would have to prepare the Closing Disclosure at least six business days before consummation because proposed § 1026.19(f)(1)(iii) would add three business days to the timeframe to obtain the

borrower's closing costs three days in advance, it may be more difficult to account for the seller's transaction accurately by that time.

Difficulties with obtaining final costs three business days before consummation. Many commenters concerned about the general three-business-day requirement cited the likelihood of coordination problems between creditors, settlement service providers, and other third-parties. Both creditors and settlement agents expressed concern that they could not guarantee that other parties, such as government entities or third-party settlement service providers, would be able to provide final closing figures in a timely manner. As a result, commenters explained that it is common practice for consumers to review final settlement costs the day before settlement or several hours before settlement.

Settlement agent commenters explained that the RESPA settlement statement includes certain loan information and requires coordination with lenders, but that they do not receive the lender's settlement statement figures until the day of or day before closing. One escrow agent commenter explained that it is not uncommon for lenders and settlement agents to revise the RESPA settlement statement frequently because of differences in software used by those parties and miscommunications between them. Settlement agents also explained that the work of clearing known title defects can sometimes occur during the days leading up to consummation because certain defects may not come to light until after a title report is analyzed.

Creditors expressed similar coordination concerns and explained that many settlement service fees are outside of the control of the creditor or the creditor's affiliate. Community banks

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benefit of a presumption that the consumer receives it three business days before consummation. As discussed in the section-by-section analysis of § 1026.19(f)(1)(iii), the proposed rule would have provided that if the Closing Disclosure is not provided to the consumer in person, the consumer is presumed to have received it three business days after it is mailed or delivered to the address specified by the consumer.

explained that they cannot ensure they receive accurate information in a timely manner from third parties such as realtors, attorneys, title companies, insurance agents, and other third-party lenders responsible for providing payoffs or subordination agreements. Commenters explained that third-party payoff information may become stale as a result of closing delays. A settlement agent commenter operating in a rural area explained that in an active real estate market, it can be difficult for creditors to obtain an appraisal more than three days before closing, and without underwriting being complete, creditors are unable to produce the exact numbers needed for the settlement statement. One non-depository lender explained that it is not uncommon for loan amounts to be adjusted in refinancings where appraisals or payoff figures from third parties arrive soon before consummation. Commenters also explained that final settlement costs could not be known in advance if consumers shop or otherwise request changes to the transaction, if settlement agent due diligence uncovers new obligations or encumbrances, or if delays cause per diem or prorated amounts to accumulate.

Costs associated with a general three-business-day period. A variety of settlement agents, title insurance companies, individual attorneys and law firms, a variety of creditors, industry trade associations, and a member of Congress, identified costs that consumers would face as a result of delayed closings caused by a mandatory three-business-day waiting period, including breach or expiration of real estate agreements; the expiration of interest rate locks; inconvenience and financial costs associated with rearranging closings (such as, if a consumer is required to arrange for temporary housing needs, or if a seller's subsequent purchase also is delayed); additional pre-closing diligence costs and attorney's fees; and, in the case of refinancings, especially those subject to the right of rescission's post-consummation funding delay, prolonged interest payments on outstanding debts.

Non-depository lenders, credit unions, community banks, mortgage brokers, settlement agents, trade associations representing those industries, a mortgage compliance company and an individual consumer stated that a general three-business-day period would inconvenience and impose logistical costs on consumers. Commenters explained consumers would have difficulties scheduling moving vans, time away from work, temporary housing, and could face delays up to 12 days or more before they could close. A mortgage company commenter noted that consumers in the military who are purchasing a home frequently stay in a hotel before they move in, and that, in those instances, closing delays could result in longer hotel stays. Law firms, settlement agents, and trade associations representing attorneys and credit unions anticipated that a general three-business-day period would lead consumers to ask more questions and engage in additional diligence before consummation, which would require more time on the part of settlement agents and attorneys per closing and, thus, increase costs to consumers.

Commenters also identified financial and opportunity costs that consumers could incur as a result of closing delays. Trade associations representing banks and settlement agents, a community bank and a community bank holding company, non-depository lenders, and a member of Congress indicated that a consumer's interest rate lock could expire as a result of a delay. As a result, commenters explained, consumers would have to pay a higher interest rate or pay additional fees to extend their rate lock or obtain a new one. Commenters expected that creditors would price rate locks higher and may limit their availability to account for closing delays across the market. A non-depository lender and a large bank estimated that the proposal's general three-business-day period, a three-business-day presumption of delivery, and two business days to prepare the disclosure would mean preparing and delivering the Closing Disclosure would take eight business days, or ten calendar days. Estimating that the cost of a rate lock at approximately two basis points per day, the non-depository lender commenter estimated consumers would pay approximately 20 basis points, or $400 on a $200,000 loan.

In addition to interest rate lock expiration, a large number of commenters expressed concern that a consumer's purchase agreement with a seller could expire, potentially putting the consumer in breach of the agreement. The consumer could lose the opportunity to purchase the home or incur per diem penalties, which in turn could jeopardize other of the consumer's arrangements. Numerous commenters also raised concerns about the "domino effect" of closing delays on sellers who may schedule coinciding settlements in which they are a buyer. Commenters were concerned this could affect the efficient operation of the residential real estate market. Commenters also explained that sellers in short-sales may be harmed, where a creditor may require that a sale occur within a specified period of time. Commenters also explained that, in the case of refinancings, where no seller is present, delays could force consumers to pay additional interest on an outstanding loan or delay their ability to meet an upcoming expense. One commenter suggested that the three-business-day timing requirement could be an unlawful interference with the right of buyers and sellers to contract.

Banks, non-depository lenders, and a trade association representing banks were concerned that a three-business-day receipt requirement would increase loan processing costs, including compliance costs or costs to extend expired rate locks or underwriting verifications, and costs necessary to secure warehouse financing capacity. For example, a community bank explained that it would have to add five days to its secondary market rate locks to meet the proposal's timelines to prevent the interest rate lock from expiring, and that such costs would be passed on to consumers. In addition, trade associations representing creditors and community banks expressed concern that delayed closings would require them to pay for additional warehouse financing capacity. Creditor and settlement agent commenters also were concerned that they would face liability and reputational risk arising from incorrect figures obtained from or delays caused by third parties, particularly where delays may result in the breach of a consumer's real estate agreement. One creditor requested that the final rule protect creditors from such liability and ensure that settlement agents bear responsibility for their mistakes.

Commenters also raised concerns that closing delays would be problematic for sellers who are paying off existing Federal Housing Administration (FHA) loans or consumers who are refinancing existing FHA loans. Commenters explained that FHA has traditionally charged borrowers a whole month's interest if they pay off their loans after the first day of any month; thus, many borrowers schedule closings at the end of the month to avoid this extra interest payment. Commenters explained that delayed closings could push scheduled end-of-month closings into the next month, causing consumers to pay additional interest.

In addition to general compliance costs, creditors noted they would face additional costs related to preparing revised Closing Disclosures. Settlement agents, law firms, credit unions, title insurance companies, and trade associations representing attorneys explained that delayed closings would result in fewer closings and increased burden on the part of settlement agents in terms of additional time and costs related to preparing the Closing Disclosure and answering consumers' questions. Some commenters thought that the pressure to avoid closing delays would lead to the circumvention of the closing process.

Uncertain benefits of a general three-business-day period. Many commenters maintained that a general three-business-day waiting period was unnecessary in light of the current tolerance rules because they limit increases in certain settlement costs, TILA rescission rights that impose a mandatory post-consummation three-business-day waiting period, other rulemakings under title XIV of the Dodd-Frank Act, and because a consumer's primary interest is in closing the transaction in a timely manner.

A wide variety of commenters also maintained that the APR accuracy requirements in Regulation Z and the good faith estimate tolerance requirements currently in Regulation X render additional waiting periods unnecessary. A trade association representing banks indicated that a consumer's cash to close amount would most likely increase due to consumer choice, rather than because of a loan origination charge, and that very few closed loans have increases in closing costs that result in tolerance violations requiring reimbursement, and therefore a three-business-day period was unjustified. Other commenters, including trade associations representing real estate agents, banks, and financial companies stated that other Bureau rulemakings under title XIV of the Dodd-Frank Act, such as the ability-to-repay, loan originator compensation, and HOEPA rulemakings made an additional three-business-day waiting period unnecessary.

A mortgage broker, a title insurance company and trade associations representing attorneys, banks, and financial companies maintained that a pre-consummation period would not enhance consumer understanding because consumers already have a long period of time to negotiate and review closing costs. A compliance company and a settlement agent commenter suggested that advance disclosure of real estate agent fees and other costs was unnecessary because consumers receive information about many fees during the course of the transaction. Commenters also emphasized that consumers are primarily interested in closing the transaction as quickly as possible and would not benefit from a waiting period.

Law firm commenters and a professional association representing attorneys did not think a waiting period would be useful without someone to help the consumer understand the Closing

Disclosure. Law firm commenters explained that they expected many consumers would wait until consummation to review the document. The association representing attorneys believed it would be necessary to schedule separate meetings with consumers to help them understand the Closing Disclosure. One law firm commenter recommended that the final rule should require that consumers have an attorney present at settlement to explain the Closing Disclosure.

Transactions subject to the right of rescission. A variety of industry commenters critical of the Bureau's proposed three-business-day waiting period questioned the necessity of the pre-consummation waiting period in light of the right of rescission available to consumers for certain transactions under § 1026.23. These commenters explained that rescission rights render a pre-consummation waiting period unnecessary and that a pre-consummation waiting period would further delay the funding of a consumer's loan. Some commenters said that consumers could experience a nine-day waiting period at the earliest to fund such a loan.[218] A community bank commenter explained that creditors sometimes permit a post-consummation waiting period for transactions not subject to TILA rescission rights as a courtesy to consumers, and that a pre-consummation waiting period would further delay these transactions as well.

Some commenters requested that the Bureau exempt refinancings from a three-business-day waiting period or permit the three-business-day waiting period to run concurrently with the rescission period because the rescission rule already protects consumers. A large bank recommended that, for transactions subject to the right of rescission, the three-business-day right to cancel should begin with the consumer's receipt of the Closing Disclosure to shorten the waiting period by four days while still preserving the consumer's opportunity to review the

[218] Commenters explained the nine-day period would be due to a three-day period by operation of proposed § 1026.19(f)(1)(iii), a three-day waiting period before consummation, and a three-day post-consummation waiting period by operation of the rescission rule.

transaction and rescind.

Alternatives recommended by commenters. Commenters recommended a number of alternatives to the proposed three-business-day period. Commenters including non-depository lenders, community banks, credit unions, and trade associations representing credit union suggested that a two-day or 48-hour period would better balance the need for advance disclosure with the consumer's interest in closing in a timely manner. Similarly, a one-day or 24-hour period was recommended by many commenters, including a State housing development authority, mortgage brokers, individual consumers, non-depository lenders, community banks, law firms, as well as trade associations representing mortgage brokers, banks and community banks, credit unions, and the manufactured housing industry. Commenters believed a one-day period would provide consumers enough time to review the disclosure and would be less disruptive than a three-business-day requirement, although some thought that even a one-day delay could be problematic for consumers.

Other commenters, including a large bank, credit unions and trade associations representing credit unions, title insurance companies and a law firm, recommended that the final rule include no pre-consummation period, or that a pre-consummation period apply only if there is a tolerance violation. The large bank commenter explained that the Bureau could accomplish this by exempting all closed-end consumer mortgage loans secured by real property from the requirement under TILA section 128(b)(2) that an inaccurate APR triggers the obligation that a consumer receive a corrected final TILA disclosure no later than three business days before consummation. The commenter stated that this would harmonize the timing between TILA and RESPA and would facilitate compliance with the Dodd-Frank Act's integrated disclosure mandate.

One individual consumer was concerned that a three-business-day period could negatively affect a purchase transaction, but the commenter also questioned whether a three-business-day period would provide consumers sufficient time to question charges. One settlement agent commenter recommended that the final rule adopt a post-consummation period in which adjustments to the transaction could occur. A mortgage broker commenter recommended, as alternatives to a three-business-day advance disclosure, requiring the consumer's signature of the Closing Disclosure at closing or requiring that the Closing Disclosure be read aloud to consumers at closing to ensure the consumer understood the transaction. A settlement agent recommended that consumers should be able to determine how much time they would like before closing, or that the final rule should apply different timing requirements to different classes of consumers, depending on how experienced they are with mortgage transactions, such as by requiring that first-time home buyers receive the Closing Disclosure six days in advance, while all other consumers would receive the disclosure one-to-three days in advance, at their option.

In addition to recommending alternative timing regimes, commenters recommended that the final rule provide more flexible exemptions from the general three-business-day period. A trade association representing real estate agents, a financial holding company, a compliance company, and various settlement agents recommended that the final rule distinguish between loan and settlement costs for purposes of imposing a pre-consummation period. Commenters recommended either separating TILA and RESPA disclosures and requiring a three-business-day period for TILA disclosures and no waiting period for RESPA disclosures, or imposing a general three-business-day period but permitting settlement figures to be finalized at closing. One trade association representing settlement agents requested that the Bureau consider an exemption from the three-business-day period if the final cash to close amount does not increase beyond a certain tolerance. The commenter explained that this would allow transactions that have been estimated more accurately at the Loan Estimate stage to close without advance delivery of the Closing Disclosure.

Consummation v. settlement. The proposed rule would have required that the Closing Disclosure be delivered three business days before "consummation," consistent with other provisions under TILA and Regulation Z. RESPA and Regulation X, by contrast, require the settlement statement to be delivered at "settlement." Some settlement agents and various trade associations representing settlement agents, the title insurance industry, and banks requested clarification on how "consummation" would be defined and how the proposal would apply in jurisdictions in which settlement and consummation occur at different times.

Trade associations representing settlement agents and the title insurance industry explained that in some States, the signing of legally binding documents may occur at one time, while consummation may not occur until one or more days later, such as when the documents are recorded. Commenters requested clarification on whether, in this case, the Closing Disclosure would be provided when the documents are recorded. Other commenters were concerned that settlement may not occur until after consummation, and that the proposed rule did not adequately account for post-consummation changes occurring during the course of settlement.

Business day. As discussed in the section-by-section analysis of § 1026.2(a)(6), the Bureau received comments on the proposed definitions of "business day" applicable to the proposed rule. As noted in the section-by-section analysis of § 1026.2(a)(6), a variety of commenters supported establishing a consistent definition of business day to promote consistency across the provisions of Regulations X and Z. Commenters observed that the specific definition would allow one less day to comply with the timing requirements. One commenter was concerned that an inconsistent business day definition could create confusion if different products are treated differently (*e.g.*, refinancings). A trade association representing banks and financial companies recommended that business days should include Saturdays because doing so would allow consumers to close sooner.

Authority issues. Several industry trade associations and a large bank stated that the Bureau lacks authority under TILA and the Dodd-Frank Act to implement this aspect of the proposal, and that TILA and RESPA both would permit the Closing Disclosure to be provided at or before consummation. A compliance company commenter maintained that the Dodd-Frank Act does not specifically mandate that the Bureau improve disclosure of realtor fees or other transaction costs outside of the cost of financing. These commenters pointed out that RESPA does not require that settlement costs be disclosed in advance and that TILA requires a three-business-day waiting period only if a loan's APR changes outside of the tolerance. A large bank, a trade association representing banks and financial companies, and a trade association representing banks stated that the three-business-day waiting period under TILA only applies to the disclosure of the APR and not to other loan or settlement-related costs. A trade association representing banks and financial companies and a trade association representing banks pointed out that, soon after RESPA was enacted, Congress substantially amended its original early settlement cost disclosure requirement after substantial public protest, which the commenter believed indicates Congress prohibited such waiting periods thereafter.[219]

[219] As originally enacted on December 22, 1974, RESPA contained a requirement that lenders disclose in writing, not later than 12 days before settlement, the amount of each charge for settlement services. *See* Public Law 93-533, section 6 (12 U.S.C. 2605, repealed 1976). Congress subsequently amended RESPA to, among other things, repeal the requirement to provide advance disclosure of actual settlement costs and replace it with a requirement that

Final Rule

After considering public comment and the ex parte submissions, the Bureau continues to believe there is significant consumer benefit to requiring that the Closing Disclosure be provided three business days before consummation. As described below, the final rule requires creditors to ensure that consumers receive the Closing Disclosure no later than three business days before consummation.

As noted above, the timing requirements of TILA and RESPA are not synchronized. TILA requires, for certain mortgage transactions, that creditors furnish a corrected disclosure to the consumer so that it is received not later than three business days before the date of consummation of the transaction if the prior disclosed APR has become inaccurate. *See* 15 U.S.C. 1638(b)(2)(A), (D). In contrast, RESPA requires that the person conducting the settlement (*e.g.*, the settlement agent) complete a settlement statement and make it available for inspection by the borrower at or before settlement. *See* 12 U.S.C. 2603(b). RESPA also provides that, upon the request of the borrower, the person who conducts the settlement must permit the borrower to inspect those items which are known to such person on the settlement statement during the business day immediately preceding the day of settlement. *Id.*

The Dodd-Frank Act amended TILA and RESPA to mandate that the Bureau establish a single disclosure scheme for use by lenders or creditors in complying comprehensively with the "disclosure requirements" of those statutes.[220] However, Congress did not define "disclosure

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lenders provide good faith estimates of likely settlement charges. Congress also added the requirement for settlement agents to make settlement costs available for inspection by the borrower upon request. *See* 12 U.S.C. 2603(b) (1976).

[220] Section 1098(2) of the Dodd-Frank Act amended RESPA section 4(a) to require that the Bureau "publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of [TILA] that, taken together, may apply to a transaction that is subject to both or either provisions of law." 12 U.S.C.

requirements" and did not instruct the Bureau on how to integrate the different timing requirements under TILA and RESPA with respect to final disclosures. The Bureau believes that harmonizing the timing requirements is a component step towards achieving the goals of integration: to facilitate compliance and to ensure that consumers receive disclosures that will aid in their understanding of their mortgage loan transactions. Accordingly, the Bureau is adopting final § 1026.19(f)(1)(iii)(A) to adjust both TILA's and RESPA's timing requirements, using its authorities under sections 105(a) of TILA, 19(a) of RESPA, 1032(a) of the Dodd-Frank Act, and, for residential mortgage transactions, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act.

Integrating the disclosures without reconciling the timing requirements would result in a series of disclosures provided by both the creditor and the settlement agent. Creditors would provide integrated disclosures three business days before consummation when necessary under TILA, as amended by MDIA, and then again at consummation. *See* TILA section 128(b)(2)(B)(ii) and (b)(2)(D); 15 U.S.C. 1638(b)(2)(B)(ii) and (b)(2)(D). Settlement agents would be required to permit the borrower to inspect the integrated disclosures one business day before settlement based on the information known by the settlement agent, and then would be required to provide them at or before "settlement," which may occur before, concurrent with, or after "consummation."

The Bureau believes this uncoordinated approach to the timing of the disclosures could result in consumer confusion and unnecessary burden for industry. Therefore, the Bureau is

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2603(a). Similarly, section 1100A(5) of the Dodd-Frank Act amended TILA section 105(b) to require that the Bureau "publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of [RESPA] that, taken together, may apply to a transaction that is subject to both or either provisions of law." 15 U.S.C. 1604(b).

using its authorities under sections 105(a) of TILA, 19(a) of RESPA, 1032(a) of the Dodd-Frank Act, and, for residential mortgage transactions, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act to adjust both TILA and RESPA to require creditors to deliver Closing Disclosures at least three business days before consummation in all cases, and not only when the APR previously disclosed exceeds tolerance. Providing all consumers with three business days to review the Closing Disclosure will greatly enhance consumer awareness and understanding of the costs associated with the entire mortgage transaction.[221]

Disclosure to consumers of such component settlement charges three business days prior to consummation would represent an increased benefit for consumers from the current disclosure requirements under RESPA. Currently, RESPA requires that settlement agents disclose settlement costs and certain loan terms on the RESPA settlement statement at or before settlement, and inspection of the statement is permitted during the business day before settlement at the consumer's request. By affirmatively requiring that all consumers receive a Closing Disclosure listing loan terms and settlement charges three business days before consummation, the Bureau believes the potential for consumers to be surprised at closing will be reduced.

As the Bureau explained in the proposal, one of the purposes of the integrated disclosures is to aid consumer understanding of their transaction through the use of disclosures. To that end, the Bureau has developed the Loan Estimate and the Closing Disclosure to facilitate a comparison between the two, so that consumers can easily compare their estimated and actual charges. The Bureau's Quantitative Study, as described in part III above, determined that the integrated disclosures better enable consumers to compare their estimated and actual terms and

[221] See also the discussion in this section-by-section analysis below for reasons why the final rule uses the TILA term "consummation" rather than the RESPA term "settlement" as the event around which disclosures must be provided.

costs than the current disclosures. *See* Kleimann Quantitative Study Report at 46-47. The Bureau believes this consumer benefit will be achieved best if consumers receive the Closing Disclosure three business days before consummation to compare the terms with the Loan Estimate, ask questions, and consider all of their options before proceeding with the transaction. To the extent changes occur between the time the Closing Disclosure is first provided three business days before consummation and consummation, consumers only will need to compare changes between two Closing Disclosures.

The benefits of a three-business-day period are not exclusive to consumers. The Bureau believes a general three-business-day requirement also will benefit industry because settlement agents, like consumers, will have time to review the Closing Disclosure in an unpressured environment and incorporate other changes to the transaction that may occur before consummation. Both creditor and settlement agent commenters explained that they have had problems coordinating to ensure the timely receipt of information necessary to prepare the RESPA settlement statement. Commenters, particularly settlement agents, explained that this frequently results in a pressured, last-minute preparation of the RESPA settlement statement, increasing the risk of errors. As noted above, some individual settlement agent commenters supported a general three-business-day requirement because it would reduce the pressured atmosphere of last-minute closings. The Bureau believes a general three-business-day requirement will help correct for this problem by providing a strong incentive for parties to coordinate earlier. Thus, the Bureau believes a general three-business-day requirement will improve the operation of closings for all parties involved.

The Bureau recognizes that providing settlement cost and other information on the Closing Disclosure three business days before consummation will require that industry adjust current practice with respect to the disclosure of settlement charges. However, the Bureau notes that industry would have to adjust current practice to comply with the Dodd-Frank Act's impact on TILA. TILA, as amended by MDIA, and Regulation Z currently require redisclosure of all changed terms three business days before consummation when the APR is inaccurate. Under TILA section 128(b)(2)(D), the creditor must provide a corrected disclosure statement if the previously disclosed APR becomes inaccurate. *See* 15 U.S.C. 1638(b)(2)(A), (D).[222] As discussed above, section 1419 of the Dodd-Frank Act also amended TILA section 128(a) by adding paragraph (17), which requires creditors to disclose the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. The items included in this amendment are nearly all of the items that are included on the RESPA settlement statement; and to disclose the aggregate figure, the Bureau believes creditors must know the itemized settlement charges. Accordingly, even if the final rule implemented the requirements of TILA, as amended by MDIA and the Dodd-Frank Act, in a manner similar to the current rule, the Bureau believes industry would have to implement systems necessary to disclose settlement cost information before consummation on the final TILA disclosures. The Bureau further believes

[222] MDIA amended TILA section 128(b)(2)(D) to require that creditors provide a corrected disclosure so that it is received by the consumer no later than three business days before consummation, if the APR changes outside of the TILA tolerances. *See* 15 U.S.C. 1638(b)(2)(D). In its final rule implementing MDIA, the Board explained that "[t]he requirement in TILA Section 128(b)(2)(D) for a creditor to provide a corrected disclosure is essentially a requirement for the creditor to provide an additional set of the early disclosures required by TILA Section 128(b)(2)(A)." *See* 74 FR 23289, 23296 (May 19, 2009). The Bureau agrees with this interpretation. Current § 1026.19(a)(2)(ii) of Regulation Z implements the MDIA amendments, requiring creditors to provide final TILA disclosures with all changed terms, pursuant to the statutory timing requirements. As a general rule, a disclosed APR is considered accurate if it is within a percentage of the actual APR. This percentage is commonly referred to as the "APR tolerance" or the "TILA tolerance." In general, the tolerance specified for closed-end "regular transactions" (those that do not involve multiple advances, irregular payment periods, or irregular payment amounts) is one eighth of one percent; the tolerance specified for "irregular" transactions (those that involve multiple advances, irregular payment periods, or irregular payment amounts, such as an adjustable rate mortgage with a discounted initial interest rate) is one quarter of one percent. *See* 12 CFR 1026.22(a).

that, in the absence of this final rule, it is possible that when the loan's previously disclosed APR becomes inaccurate, creditors would elect to provide final TILA disclosures with all changed terms, including settlement cost information required by TILA section 128(a)(17), to all consumers as a matter of practice to manage their TILA liability risk.[223]

Commenters opposed to the proposal were concerned that a general three-business-day timing requirement would lead to closing delays. As discussed below, the Bureau does not believe such a requirement alone would be the primary cause of any such delays. The Bureau believes creditors and settlement agents will be able to coordinate in advance based on when consummation is expected to occur to ensure that consumers receive a timely Closing Disclosure that includes the actual terms or is based on the best information reasonably available at the time it is provided. *See* the section-by-section analysis of § 1026.19(f)(1)(i). With a three-business-day requirement, the timing of particular actions by creditors and settlement agents may shift forward, further reducing the probability of closing delays. The Bureau further believes industry will have additional incentive to coordinate preparation of the Closing Disclosure in light of the interest in avoiding closing delays shared by consumers, sellers, and other parties.

Thus, the Bureau believes creditors or settlement agents can provide the Closing Disclosure so that it is received by the consumer no later than three business days before consummation without delaying consummation while they await more precise information about the actual terms of the transaction. In addition, the Bureau believes the revisions to the proposed redisclosure requirements will significantly reduce the risk of closing delays, as discussed in the

[223] As noted in the proposal, the Bureau received extensive feedback indicating that APR estimates included in the early TILA disclosures are so rarely accurate by the time of consummation that most creditors provide corrected disclosures at least three business days before consummation as a standard business practice, instead of analyzing the accuracy of the disclosed APR to ensure compliance with MDIA.

section-by-section analysis of § 1026.19(f)(2)(i) and (f)(2)(ii).

Some commenters were concerned that a three-business-day rule would lead to additional closing conferences or time spent with consumers, and some commenters suggested that the Bureau require that attorneys or other settlement service providers be present to assist consumers with understanding their transaction. The final rule does not require the scheduling of closing conferences or the presence of particular personnel at a closing. The Bureau is concerned that such a requirement would be burdensome. The Bureau further believes that the design of the Loan Estimate and Closing Disclosure will help consumers understand their transaction, even if additional personnel are not available, as discussed in the Kleimann Quantitative Study Report.[224]

To the extent consumers ask creditors, settlement agents, or other parties questions about their transaction based on the information in the Closing Disclosure, the Bureau believes a general three-business-day requirement will improve consumer awareness and understanding of their transaction, consistent with Dodd-Frank Act section 1405(b). Enhancing consumer awareness and understanding is one of the principal goals of this rulemaking and is consistent with the purpose of the integration mandate. Thus, the Bureau believes a potential increase in burden associated with additional engagement with consumers is justified. In addition, to the extent consumers have an opportunity to ask questions and identify errors before they arrive at closing, a general three-business-day requirement may increase the efficient operation of closings.

Some commenters were concerned that a three-business-day requirement would be

[224] As noted above, the Bureau's Quantitative Study determined that the integrated disclosures better enable consumers to compare their estimated and actual terms and costs than the current disclosures, and to understand their final transaction better than the current disclosures. *See* Kleimann Quantitative Study Report at 46-48.

difficult to comply with because loan underwriting is sometimes not completed until soon before consummation, particularly in active real estate markets. While the Bureau appreciates that it may be difficult in certain cases to complete underwriting in advance, the Bureau does not believe such problems will be widespread as a result of a general three-business-day requirement because creditors already must be in a position to know a mortgage loan's APR as necessary to comply with MDIA's three-business-day requirement.

Commenters were concerned that a three-business-day requirement would have a negative impact on consumer choice. As discussed below, the Bureau believes the final rule affords consumers flexibility to make a wide variety of changes to their transaction between the time the Closing Disclosure is first provided and consummation without triggering a new three-business-day period. In fact, the Bureau believes a requirement to provide the Closing Disclosure so that it is received by consumers no later than three business days before consummation will help consumers make more informed decisions because they will have more information about the entire transaction before consummation. Further, in light of the revisions made to the proposed redisclosure requirements, discussed in greater detail in the section-by-section analysis of § 1026.19(f)(2) below, the Bureau does not believe a three-business-day period will frustrate consumer choice. The Bureau believes these revisions also address commenters' concern that closing delays would lead consumers to incur an additional month's interest based on FHA payoff rules.[225]

Several commenters stated that a three-business-day requirement was unnecessary because consumers already have time during the loan application, underwriting, and closing

[225] In addition, the Bureau believes the prepayment penalty provisions adopted in the Bureau's 2013 ATR Final Rule and May 2013 ATR Final Rule will reduce the likelihood that consumers will incur such charges in the future.

process to inform themselves about their transaction. However, the Bureau is concerned that a consumer's ability to understand the transaction and ask questions is limited without a single disclosure that presents all of the terms. Consumers may have difficulty making purchase decisions or other tradeoffs without accurate information about all of the costs involved in their transactions. As commenters explained, mortgage loan transactions involve many pieces of information from a variety of sources and, in some cases, underwriting and title exams may not conclude until later in the process. Because creditors and settlement agents are in a better position than consumers to coordinate this information and account for disbursements, the Bureau believes it is appropriate for consumers to receive this information in a single, integrated disclosure before consummation. The Bureau understands that consumers have an interest in completing their transaction in a timely manner, but the Bureau believes this goal can be achieved while also providing consumers timely information about the terms of their transaction.

The Bureau also believes a general three-business-day requirement is warranted, notwithstanding the Bureau's other Title XIV Rulemakings. While regulations adopted in the 2013 ATR Final Rule, 2013 Loan Originator Final Rule, and the 2013 HOEPA Final Rule provide important consumer protections, they do not specifically address the goal of enhancing consumers' awareness and understanding of the specific terms of their transaction. Moreover this final rule will work in concert with other consumer protections. For example, the Bureau's 2013 HOEPA Final Rule adopted counseling requirements, including requirements that creditors cannot extend a high-cost mortgage to a consumer unless the creditor receives written certification that the consumer has obtained counseling on the advisability of the mortgage from an approved counselor. *See* 12 CFR 1026.34(a)(5). In addition, the 2013 HOEPA Final Rule adopted requirements that lenders provide loan applicants a written list of counseling organizations that provide counseling services in the applicant's area. *See* 12 CFR 1024.20(a)(1). While counselors can provide general guidance, they can provide much more effective counseling if their advice is tailored to the terms of a consumer's transaction, based on information in the Closing Disclosure. To this end, the Bureau believes a general three-business-day review period will provide consumers time to consult a housing counselor or other professionals about the particulars of their transaction before consummation.

Other timing standards recommended by commenters. With respect to the suggestion that the Bureau exempt all closed-end consumer credit transactions secured by real property from MDIA's three-business-day redisclosure requirement (triggered by an inaccurate APR), the Bureau declines. For the reasons discussed below, the Bureau believes an exemption from the MDIA requirement that consumers receive the TILA disclosures three business days before consummation when the APR is inaccurate would be inconsistent with both TILA and the goals that this final rule seeks to achieve.

While such an exemption might eliminate concerns about delayed closings and reduce some burden on industry, it would remove what the Bureau believes is an important existing consumer protection under MDIA. As noted above, the Bureau believes consumers should be provided the opportunity to review their final loan terms and costs in an unpressured environment to identify mistakes, ask questions, and generally understand their transaction before becoming obligated to it. Providing consumers with information about their final loan terms and costs three business days prior to consummation also was recognized by the Board and HUD as providing important consumer benefits and was recommended by those agencies to Congress. *See* Board-HUD Joint Report at 43-44. In addition, the Bureau has developed the Loan Estimate and Closing Disclosure to match closely to enable consumers to easily compare their estimated and actual loan terms and costs. Further, as noted above, the Bureau's Quantitative Study has determined that the Bureau's integrated disclosures perform better than the current disclosures at enabling consumers to identify differences between the early and final disclosures. *See* Kleimann Quantitative Study Report at 46-47.

Because the Closing Disclosure contains a significant amount of detailed content necessary to inform consumers about their loan and their settlement charges, the Bureau believes that providing consumers with at least three business days before consummation to review the information and ask questions provides an important benefit to consumers. The Bureau believes the good faith estimate tolerance rules under § 1026.19(e)(3) will protect consumers against the most significant bait-and-switch risks. However, they do not provide protection against all changes that may occur between the time the Loan Estimate is provided and consummation. These changes include increases in certain real estate-related costs and disbursements to others, which could create legal issues for consumers after consummation. Further, the Bureau believes that providing consumers with better disclosures to identify changes or inaccuracies, as well as providing them with more time in which to do so, will further encourage creditors to provide more accurate Loan Estimates and Closing Disclosures, and discourage the use of bait-and-switch tactics.

The Bureau has considered commenters' suggestions that the Closing Disclosure be provided earlier than three business days before consummation. However, as stated in the proposal, the Bureau also is concerned that it would be impractical to require delivery earlier than three business days before consummation. Thus, the final rule provides flexibility to industry by requiring creditors to ensure that consumers receive the disclosures no later than the third business day before consummation. Under this approach, a creditor need not complete the disclosures until the third business day before consummation, provided it can ensure that the consumer will receive the disclosures that day, such as via electronic mail consistent with applicable requirements regarding electronic delivery or hand delivery. *See* comments 19(f)(1)(ii)-2 and 19(f)(1)(iii)-2. In addition, as explained in more detail in the section-by-section analysis of § 1026.19(f)(1)(iii) below, the final rule makes amendments to the proposal, which the Bureau believes will facilitate compliance with the delivery requirements.

The Bureau believes a general three-business-day requirement will benefit consumers more than a requirement for creditors to ensure the consumer receives the Closing Disclosure two days or one day before consummation.[226] While shorter periods would reduce the extent of revisions to the Closing Disclosure before consummation, they would provide consumers less time to review the transaction. As noted above, the Closing Disclosure, like the current final TILA disclosure and RESPA settlement statement, contains a significant amount of information regarding the credit and the real estate transaction. The Bureau believes a three-business-day period in which to review the information is a reasonable amount of time considering this significant amount of information on the disclosure. The Bureau also believes a three-business-day period is appropriate because the three-business-day period was the period recently instituted by Congress under its MDIA amendments to TILA with respect to creditor disclosures when the loan's previously disclosed APR becomes inaccurate.

Transactions subject to the three-business-day right of rescission. The Bureau declines to exempt transactions subject to the three-business-day right of rescission from

[226] While the final rule does not impose a requirement for creditors to ensure that consumers receive the Closing Disclosure one or two days before consummation, the final rule does include a requirement for creditors to permit consumers a right to inspect the Closing Disclosure the business day before consummation upon the consumer's request. *See* the section-by-section analysis of § 1026.19(f)(2)(i).

§ 1026.19(f)(1)(ii)(A) or otherwise amend the rescission rules.[227] The Bureau believes the pre-consummation waiting period and the post-consummation waiting period for transactions subject to the right of rescission serve different purposes. The pre-consummation period permits the consumer an opportunity to understand the specific elements of the transaction, question specific charges, ask questions, consider other options, or potentially improve the terms of the transaction prior to consummation. On the other hand, the right of rescission provides consumers an opportunity to unwind the entire transaction and receive any fees they may have paid for the transaction. Exempting transactions subject to the right of rescission from the general three-business-day pre-consummation review period would mean many consumers would lose the opportunity to review the transaction details and resolve any concerns before consummation. The Bureau further notes that the Congresses that passed the Dodd-Frank Act and MDIA did not exempt rescindable transactions from MDIA's three-business-day waiting period. Currently under Regulation Z, creditors must provide the final TILA disclosures so that consumers receive them no later than three business days before consummation if the loan's previously disclosed APR becomes inaccurate, even if the loan is subject to the post-consummation three-business-day right of rescission.

While the Bureau has authority to exempt transactions from TILA's requirements in certain circumstances, an exemption is not warranted here because the amendments made to the final rule's redisclosure requirements in § 1026.19(f)(2) will significantly reduce the potential for

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[227] For certain transactions, including refinancings with a new creditor or refinancings with the same creditor where new money is advanced, TILA grants consumers a three-day right to rescind the transaction where a security interest is or will be retained in the consumer's principal dwelling. *See* 15 U.S.C. 1635(a). The right of rescission permits consumers time to reexamine their credit contracts and cost disclosures and to reconsider whether they want to put their home at risk by offering it as security for credit. *See* 12 CFR 1026.23.

closing delays. In addition, refinancings that are subject to the right of rescission typically involve fewer parties and require less coordination than purchase-money transactions. Thus, the Bureau believes creditors in those transactions should be able to provide disclosures for transactions subject to the right of rescission three business days before consummation without imposing burdensome delays on consumers.

Consummation v. settlement. The final rule requires that the Closing Disclosure be provided three business days before "consummation," rather than before "settlement." In general, TILA and Regulation Z require that creditors provide final TILA disclosures in certain circumstances three business days before "consummation" of the credit transaction, while RESPA and Regulation X require settlement agents to provide the RESPA settlement statement at or before "settlement." Regulation Z currently defines "consummation" as "the time that a consumer becomes contractually obligated on a credit transaction." *See* 12 CFR 1026.2(a)(13). Regulation X, by contrast, provides that the RESPA settlement statement must be delivered by "settlement," which is defined as "the process of executing legally binding documents regarding a lien on a property that is subject to a federally related mortgage loan." *See* 12 CFR 1024.2(b). The Bureau appreciates that "consummation" and "settlement" may not always coincide in some jurisdictions. The Bureau believes that reconciling this difference between TILA and RESPA satisfies the integration mandate. The Bureau believes "consummation" is appropriate because TILA section 128(b)(2)(D) requires that the creditor provide final TILA disclosures no later than three business days before consummation where the loan's previously disclosed APR becomes inaccurate. *See* 15 U.S.C. 1638(b)(2)(D). This is the standard that applies to TILA disclosures currently under MDIA, which, as amended by Dodd-Frank Act section 1419, include the disclosure of settlement cost information. *See* 15 U.S.C. 1638(a)(17). In addition, TILA requires that the early TILA disclosures be provided no later than seven business days before "consummation." 15 U.S.C. 1638(b)(2)(A). The Bureau believes that the early and final TILA disclosures should be provided in the sequence set forth under TILA to ensure consumers benefit from the time necessary to review the respective disclosures before becoming obligated on the credit transaction. In addition, because "consummation" is a particular point in time, while "settlement" is defined as a "process," the Bureau believes the rule provides clarity with respect to when the disclosures must be provided. Accordingly, the final rule uses "consummation" as the timing standard applicable to the provision of the Closing Disclosure.

As noted above, the Bureau recognizes that "consummation" and "settlement" may not coincide in some jurisdictions. Indeed, the definition of "settlement" in Regulation X indicates that a settlement is not necessarily a singular event involving the execution of one agreement, but is instead a "process of executing legally binding documents" regarding a lien on property that is subject to a federally related mortgage loan. *See* 12 CFR 1024.2(b). Thus, in some jurisdictions, a settlement may begin before "consummation" under Regulation Z, and, in some jurisdictions, may conclude later.

The Bureau believes that the final rule should account for the variety of ways settlements are handled across the country without imposing unnecessary costs on consumers, sellers, or industry. Accordingly, the final rule provides additional flexibility by narrowing the triggers for new three-business-day waiting periods when changes occur to the terms of the transaction, as discussed in the section-by-section analysis of § 1026.19(f)(2). The Bureau believes these changes will help ensure the efficient operation of closings. To account for situations in which consummation may occur before a settlement concludes, the final rule provides additional flexibility for post-consummation events, as discussed in the section-by-section analysis of

§ 1026.19(f)(2)(iii) below.

Some commenters requested clarification of when “consummation” occurs, specifically inquiring whether it occurs when documents are recorded. As noted above, “consummation” is defined as “the time that a consumer becomes contractually obligated on a credit transaction.” *See* 12 CFR 1026.2(a)(13). Existing commentary to Regulation Z explains that when a contractual obligation on the consumer’s part is created is a matter to be determined under applicable law, and that Regulation Z does not make this determination. *See* comment 2(a)(13)-1. Existing commentary also explains that consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement. *See* comment 2(a)(13)-2.

Business day. As noted in the section-by-section analysis of § 1026.2(a)(3), the final rule adopts the specific definition of business day applicable to § 1026.19(f)(1)(ii), as proposed. The Bureau believes the specific definition in § 1026.19(f)(1)(ii) is appropriate because the delivery requirement in § 1026.19(f)(1)(iii), as discussed in the section-by-section analysis for that section, provides that the consumer is deemed to have received the Closing Disclosure three business days after they are mailed or delivered, if not provided to the consumer in person. That provision uses the specific definition of business day to account for the current practice of United States postal service delivery on Saturday. Using the specific definition for the Closing Disclosure delivery requirements in this rule also will assist industry and consumers by facilitating the efficient delivery of the Closing Disclosure to reduce the potential for closing delays.

The Bureau does not expect that such use of the specific definition of business day in this rule will impose costs on industry because it would not operate to require that a creditor’s or settlement agent's office be open on Saturday. It only enables them to count Saturday as a day on which the consumer received the disclosures. The Bureau believes that using the general definition of business day in § 1026.19(f)(1)(ii) and (f)(1)(iii) would create unnecessary delays in many cases because it would mean that creditors and settlement agents could not count Saturdays as a day of receipt, unless the creditor's or settlement agent's offices were open to the public for carrying on substantially all of its business functions. The Bureau believes it would be incongruous if the regulation did not recognize a consumer's actual receipt of the Closing Disclosure on a Saturday simply because the creditor's offices were not open. The Bureau recognizes that using a consistent definition of business day, both within Regulation Z and between Regulation X and Regulation Z, could benefit industry and consumers alike by providing more certainty regarding regulatory requirements and reducing compliance costs. However, the Bureau believes that streamlining the definition of business day should be part of a more comprehensive assessment of Regulation Z, which the Bureau believes is outside of the scope of this rulemaking. See the section-by-section analysis of § 1026.2(a)(6) for additional discussion of the definition of business day.

Other issues raised by commenters. With respect to a commenter's request that the final rule include protections for the creditor from breach of contract claims arising from delayed closing, the final rule does not expressly address such limitations on creditor liability. The final rule addresses disclosure obligations under TILA and RESPA; other creditor duties are outside the scope of this rulemaking. With respect to the commenter's request that the final rule address creditor liability for the accuracy of the Closing Disclosure, see the section-by-section analyses of § 1026.19(f)(1)(i) and (f)(1)(v).

Final provisions. For the aforementioned reasons, the final rule adopts

§ 1026.19(f)(1)(ii)(A) and comment 19(f)(1)(ii)-1 substantially as proposed. Final § 1026.19(f)(1)(ii)(A) makes technical revisions by adding references to other provisions of § 1026.19(f) that serve as exceptions to the general three-business-day requirement under § 1026.19(f)(1)(ii)(A). Specifically, the final rule replaces the reference to § 1026.19(f)(2) with more specific references to § 1026.19(f)(2)(i) and (f)(2)(iii) through (f)(2)(v). This change has been made because final § 1026.19(f)(2) has been revised to narrow the circumstances under which a new pre-consummation three-business-day period is required, as discussed in the section-by-section analysis of § 1026.19(f)(2)(i) and (ii) below. The final rule makes conforming changes to comment 19(f)(1)(ii)-1. Comment 19(f)(1)(ii)-1 also includes a technical revision by omitting a reference to comment 2(a)(6)-1 so that comment 19(f)(1)(ii)-1 cross-references only comment 2(a)(6)-2, which discusses the specific definition of business day applicable to § 1026.19(f)(1)(ii).

The final rule also adopts comment 19(f)(1)(ii)-2, with modifications. The comment has been reorganized for clarity, makes technical revisions, and includes additional discussion. The comment references the receipt rule in § 1026.19(f)(1)(iii) and includes examples illustrating when the Closing Disclosure would have to be delivered or placed in the mail to ensure the consumer receives the Closing Disclosure no later than three business days before consummation. The Bureau believes this language helps clarify the example that follows. In that example, consummation is scheduled for Thursday, and the comment explains that a creditor would satisfy the requirements of § 1026.19(f)(1)(ii)(A) if the creditor places the disclosures in the mail on Thursday of the previous week, because, for the purposes of § 1026.19(f)(1)(ii), Saturday is a business day, pursuant to § 1026.2(a)(6), and, pursuant to § 1026.19(f)(1)(iii), the consumer would be considered to have received the disclosures on the Monday before consummation is scheduled. The comment also includes a cross-reference to comment 19(f)(1)(iii)-1, which further clarifies the requirements of § 1026.19(f)(1)(iii) applicable to mail delivery. The comment also explains that a creditor would not satisfy the requirements of § 1026.19(f)(1)(ii)(A) in this example if the creditor places the disclosures in the mail on the Monday before consummation.

The comment also includes more detail than proposed comment 19(f)(1)(ii)-2 in explaining how a creditor in the above example could satisfy the requirements of § 1026.19(f)(1)(ii)(A) by delivering the Closing Disclosure by way of electronic mail on a day (Monday) that is three business days before consummation (Thursday). The comment also revises the proposal's reference to § 1026.17(a)(1) relating to disclosures in electronic form. The final comment refers to § 1026.38(t)(3)(iii) instead, which permits the Closing Disclosure to be provided in electronic form, subject to compliance with the E-Sign Act. As revised, the comment explains that the creditor in the above example could satisfy the requirements of § 1026.19(f)(1)(ii)(A) by delivering the disclosures on Monday, for instance, by way of electronic mail, provided the requirements of § 1026.38(t)(3)(iii) relating to disclosures in electronic form are satisfied and assuming that each weekday is a business day, and provided that the creditor obtains evidence that the consumer received the emailed disclosures on Monday. The comment also includes a cross-reference to comment 19(f)(1)(iii)-2, which discusses how § 1026.19(f)(1)(iii) applies to delivery methods other than mail delivery.

Final § 1026.19(f)(1)(ii)(A) and comments 19(f)(1)(ii)-1 and -2 are adopted pursuant to the Bureau's legal authority under sections 105(a) of TILA, 19(a) of RESPA, 1032(a) of the Dodd-Frank Act, and, for residential mortgage transactions, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. The Bureau has considered the purposes for which it may exercise its authority under section 105(a) of TILA and, based on that review, believes that the rule and commentary are appropriate. The final rule and commentary will help consumers avoid the uninformed use of credit by ensuring that consumers receive disclosures of the actual terms and costs associated with the mortgage loan transaction early enough that consumers have sufficient time to become fully informed as to the cost of their credit. The final rule and commentary are consistent with section 129B(e) of TILA because failing to provide borrowers with enough time to become fully informed of the actual terms and costs of the transaction is not in the interest of the borrower.

The Bureau also has considered the purposes for which it may exercise its authority under section 19(a) of RESPA and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will ensure more effective advance disclosure of settlement costs by requiring creditors to disclose the actual settlement costs associated with the transaction three business days before consummation.

The final rule and commentary are consistent with Dodd-Frank Act section 1032(a) because the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan and settlement services if consumers receive the disclosures reflecting the terms and costs associated with their transactions three business days before consummation.

In addition, the Bureau has considered the purposes for which it may exercise its authority under section 1405(b) of the Dodd-Frank Act and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will improve consumer awareness and understanding of the mortgage loan transaction by ensuring that consumers receive the disclosures reflecting the terms and costs associated with their transactions three business days in advance of consummation. The final rule and commentary also will be in the interest of consumers and in the public interest because they may eliminate the opportunity for bad actors to surprise consumers with unexpected costs at the closing table, when consumers are less able to question such costs.

The Bureau recognizes that the timing requirement in § 1026.19(f)(1)(ii)(A) is a change from current industry practice. During the Small Business Review process, several small entity representatives were opposed to this modification. *See* Small Business Review Panel report at 35, 38, 40, 45, 53-54, 59-60, 67-68, 72, and 77. The Small Business Review Panel recommended that the Bureau explore ways to mitigate the potential impact of the three business day requirement on small entities. *Id.* at 29. While the final rule continues to require that the Closing Disclosure be provided to consumers three business days before consummation in all circumstances, the final rule has provided for more flexibility, in part, because of the concern of the rule's impact on the market. As discussed above in the section-by-section analysis of § 1026.19(f)(1)(i), the final rule includes new comment 19(f)(1)(i)-2, which clarifies when creditors may use the best information reasonably available when providing the disclosures required under § 1026.19(f)(1)(i). In addition, the final rule narrows the circumstances under which a new waiting period will be triggered for revisions to the Closing Disclosure, as discussed in more detail in the section-by-section analysis of § 1026.19(f)(2) below. Further, the final rule clarifies the receipt requirements in § 1026.19(f)(1)(iii), which the Bureau believes will facilitate compliance. The Bureau believes these modifications will reduce burden on small entities.

19(f)(1)(ii)(B) Timeshares

As explained above, in 2008 Congress amended TILA to require delivery of final disclosures three business days prior to consummation. However, Congress explicitly exempted mortgage loans secured by timeshares from MDIA's three-business-day requirement.[228] Accordingly, the Bureau proposed § 1026.19(f)(1)(ii)(B), which would have provided that, for transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the creditor shall ensure that the consumer receives the disclosures required under § 1026.19(f)(1)(i) no later than consummation. The Bureau proposed these requirements pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act.

Proposed comment 19(f)(1)(ii)-3 would have explained that, for loans secured by timeshares, § 1026.19(f)(1)(ii)(B) requires a creditor to ensure that the consumer receives the disclosures required under § 1026.19(f)(1)(i) as soon as reasonably practicable, but no later than consummation. The proposed comment also would have included illustrative examples of this requirement.

Comments. A trade association representing the timeshare industry supported the Bureau's proposed exemption from the Closing Disclosure's timing requirements. The commenter also explained that proposed comment 19(f)(1)(ii)-3 should be modified to clarify that, if the creditor in the case of a transaction secured by a consumer's interest in a timeshare plan provides the credit application and consummates the transaction on the same day, or if consummation occurs a day after the application is received, there should be no requirement to provide the Loan Estimate required by § 1026.19(e)(1)(iii), and that the creditor would comply

[228] *See* MDIA, Public Law 110-289, section 2502(a)(6), 122 Stat. 2654, 2857 (2008); 15 U.S.C. 1638(b)(2)(G). "Timeshare" is defined in 11 U.S.C. 101(53D).

with § 1026.19(e)(1)(iii) and (f)(1)(i) by providing the Closing Disclosure. As discussed in the section-by-section analysis of § 1026.19(e)(1)(iii) above, the commenter noted that timeshare transactions are typically consummated on the same or very next day after the creditor receives the application.

The commenter also requested that comment 19(f)(1)(ii)-3 be amended to clarify that timeshare transactions covered by the rule may be consummated at any time after the Closing Disclosure is provided, similar to language in existing comment 19(a)(5)(ii)-1. The commenter further requested that language be added to the comment explaining that the disclosures required by § 1026.19(e)(1)(iii) and (f)(1)(i) are not required to be provided if the consumer's application will not or cannot be approved on terms requested by the consumer or if the consumer has withdrawn the application, similar to language in existing comment 19(a)(5)(ii)-4.

The commenter also requested that the Bureau also exempt timeshares from many of the Dodd-Frank Act's amendments to TILA by, for example, allowing timeshare lenders to use a timeshare-specific Closing Disclosure form or to strike out or omit inapplicable disclosures on the proposed forms. The commenter indicated that this would fulfill the exemption for timeshares recognized in the Dodd-Frank Act.

Final rule. The Bureau adopts § 1026.19(f)(1)(ii)(B) and comment 19(f)(1)(ii)-3 substantially as proposed, but has added additional commentary in response to the comments received. As discussed in the section-by-section analysis of § 1026.19(f)(1)(i), the final rule includes comment 19(f)(1)(i)-3 explaining that, for transactions covered by § 1026.19(f)(1)(i), creditors may rely on comment 19(e)(1)(iii)-3 in determining that disclosures are not required by § 1026.19(f)(1)(i) because the consumer's application will not or cannot be approved on the terms requested or the consumer has withdrawn the application. Thus, for timeshare transactions covered by § 1026.19(f)(1)(ii)(B), creditors need not provide the Closing Disclosure if a consumer's application is denied or withdrawn, in accordance with comment 19(f)(1)(i)-3.

Comment 19(f)(1)(ii)-3 adds language to proposed comment 19(f)(1)(ii)-3 clarifying that timeshare transactions may be consummated at the time or any time after the disclosures required by § 1026.19(f)(1)(i) are received by the consumer. To avoid uncertainty over whether consummation may occur after only the Closing Disclosure is provided, the comment also indicates that, in some cases, the Loan Estimate must be provided under § 1026.19(e) and includes a cross-reference to comment 19(e)(1)(iii)-4. Comment 19(f)(1)(ii)-3 amends the examples in proposed comment 19(f)(1)(ii)-3 to demonstrate that the Closing Disclosure must be provided no later than consummation. The comment includes an example in which an application is received on a Monday and consummation occurs on Friday of that week. The comment also includes an example in which an application is received on a Monday and consummation occurs the next day, on Tuesday of that week. In both examples, the Closing Disclosure must be provided no later than consummation.

To conform the comment to the language in § 1026.19(f)(1)(ii)(B), the comment omits language in proposed comment 19(f)(1)(ii)-3 that would have explained that, if an application is received on a Monday and consummation is scheduled for Friday, "the creditor may provide the consumer with the disclosures required by § 1026.19(f)(1)(i) on Tuesday, June 2, if doing so is reasonably practicable." The comment also revises proposed guidance that would have addressed compliance with § 1026.19(e). Comment 19(f)(1)(ii)-3 explains that, in some cases, a Loan Estimate also must be provided under § 1026.19(e) and includes a cross-reference to comment 19(e)(1)(iii)-4, which addresses the provision of the Loan Estimate in timeshare transactions, as discussed in the section-by-section analysis of § 1026.19(e)(1)(iii).

Section 1026.19(f)(1)(ii)(B) and comment 19(f)(1)(ii)-3, as finalized, carry out the purposes of TILA and RESPA by ensuring meaningful disclosure of credit terms and effective advance disclosure of settlement costs, consistent with section 105(a) of TILA and 19(a) of RESPA, respectively. Also, the final rule and commentary will improve consumer awareness and understanding of transactions involving residential mortgage loans by requiring effective disclosure within a timeframe appropriate for loans secured by a timeshare, which will be in the best interest of consumers and the public consistent with Dodd-Frank Act section 1405(b).

19(f)(1)(iii) Receipt of Disclosures

TILA and RESPA differ in their treatment of delivery requirements for the final disclosures. Section 128(b)(2)(E) of TILA, as amended by MDIA, provides that, if the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed. 15 U.S.C. 1638(b)(2)(E). RESPA does not expressly address delivery requirements. Regulation Z provides that if the disclosures are provided to the consumer by means other than delivery in person, the consumer is deemed to have received the disclosures three business days after they are mailed or delivered. *See* 12 CFR 1026.19(a)(2)(ii). Regulation X provides that the settlement agent shall deliver the completed RESPA settlement statement at or before the settlement, except if the borrower waives the right to delivery of the completed RESPA settlement statement, in which case the completed RESPA settlement statement shall be mailed or delivered as soon as practicable after settlement. *See* 12 CFR 1024.10(b), (c).

To establish a consistent standard for the Closing Disclosure, the Bureau proposed to adopt § 1026.19(f)(1)(iii), which would have provided that, if any disclosures required under § 1026.19(f)(1)(i) are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer. The Bureau proposed these requirements pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act. Proposed § 1026.2(a)(6) would have applied the specific definition of "business day" to § 1026.19(f)(1)(iii). The specific definition of business day is the definition that applies to the right of rescission in § 1026.23 and includes all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

Proposed comment 19(f)(1)(iii)-1 would have explained that if any disclosures required under § 1026.19(f)(1)(i) are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered. The proposed comment would have further explained that this is a presumption which may be rebutted by providing evidence that the consumer received the disclosures earlier than three business days. The proposed comment also would have included illustrative examples. Proposed comment 19(f)(1)(iii)-2 would have clarified that the presumption established in § 1026.19(f)(1)(iii) applies to methods of electronic delivery, such as email. However, the comment also would have explained that creditors using electronic delivery methods, such as email, must also comply with § 1026.17(a)(1). This proposed comment also would have included illustrative examples.

The Bureau recognized in the proposal that this requirement is different than the current requirement in Regulation Z. As explained above, the current rules deem corrected disclosures mailed or delivered to the consumer by a method other than in-person delivery to be received three business days after mailing or delivery. In contrast, the proposed rule instead would have created a presumption that the disclosures are received three business days after they are mailed or delivered to the address provided by the consumer. The Bureau was concerned that the current rule may not be appropriate for the Closing Disclosure, which contains much more information than the final TILA disclosures subject to the current rule, and therefore would require more time to review and understand. The Bureau reasoned that it therefore may be appropriate to create a presumption of receipt, which would provide additional encouragement for lenders to ensure that the disclosures are received in a timely manner.

The Bureau solicited feedback regarding whether the proposed rule would create uncertainty regarding compliance and whether the rule should be made analogous to § 1026.19(a)(2), which uses "deem" instead of "presume," or whether § 1026.19(a) should be modified to reflect § 1026.19(f)(1)(iii), if the final rule adopts the presumption of receipt.

Comments

The Bureau received public comment and an ex parte submission regarding the proposed rule's presumption of receipt. A variety of commenters identified the proposed three-day presumption of receipt as a potential source of additional costs and delays. Commenters observed that the three-day presumption of receipt would add three more business days to the general three-business-day pre-consummation period, which could require that the Closing Disclosure be provided a minimum of six business days before consummation. Many commenters had questions about what type of evidence would be sufficient to demonstrate compliance with the rule and to respond to challenges to the presumption that the Closing Disclosure was not timely received.

Some commenters, including the SBA, expressed concern that demonstrating evidence of physical delivery, such as by using an overnight courier service, could be burdensome, and asked that the Bureau provide flexibility in the delivery rules such as by recognizing methods of electronic delivery and by providing clear guidance on what forms of proof are sufficient to demonstrate compliance. The SBA observed that the three-day presumption applied even for disclosures that are emailed, unless it could be proved that they were received earlier. A trade association representing settlement agents asked whether delivery by facsimile machine would be acceptable. A number of commenters suggested that electronic delivery methods, such as facsimile or email, could raise questions about how to demonstrate evidence of delivery, such as by read receipt, return receipt, an email from the person to be obligated on the loan, or email tracking metrics, such as open and click-through rates.

Several bank and credit union commenters, trade associations representing banks and financial companies, settlement agents, and title insurance commenters expressed concern that use of the word "presumed" meant the presumption could be defeated by an assertion that a consumer received it more than three business days after mailing or by denying that they received the disclosure by presenting oral evidence or a written affidavit. Commenters expressed concerns that managing compliance risk associated with defeating the presumption would likely delay closings and increase costs.

Trade associations representing banks expressed concern that the rebuttable presumption could delay closings because creditors or settlement agents would wait until they obtained sufficient evidence of receipt, particularly if a consumer waited to notify someone that it did not receive a timely disclosure. One trade association representing banks explained that creditors would not know that a consumer did not receive a mailed disclosure, or that receipt had been delayed, unless the consumer informed the creditor, and that the pre-consummation waiting period could be delayed if consumers wait to tell creditor that they did not receive the Closing Disclosure. A credit union commenter observed that a three-day presumption for electronic communications would encourage industry to send documents in-person or by overnight delivery to guarantee receipt.

A large bank commenter was concerned that creditors could face TILA liability for mail delivery delays that are outside of the creditor's control. A title insurance company explained that the rebuttable presumption would increase post-closing litigation, and that higher litigation risk would increase costs that would be passed on to consumers.

Rural lenders, settlement agents, and trade associations representing attorneys and settlement agents expressed concern about how the timing of the Closing Disclosure could impact closings in rural areas. Commenters explained that consumers are frequently in transit over long distances to attend a closing and may not always be able to receive documents electronically, that delivery can take longer than three days in certain areas and that certain carriers will not deliver documents on Saturdays. A rural lender explained that in-person delivery is not always an option in rural areas, so creditors would likely have to mail the Closing Disclosure six business days before consummation, but that proving timely delivery would be difficult.

To address these concerns, a large bank commenter recommended that the Bureau clarify in commentary that the presumption may be rebutted only by evidence that consumer received the disclosure earlier than three business days after mailing or delivery, but that it could not be challenged by assertions or evidence that the disclosures were in fact received more than three business days after mailing. A variety of commenters recommended retaining the current rule in Regulation Z that disclosures are deemed to be received three days after placed in the mail. A title insurance company commenter explained that "deemed" would make compliance more certain and would not delay transactions while creditors and settlement agents obtain evidence of receipt. The commenter suggested that the term "presume" would lead to post-closing litigation when persons in default on their loans attempt to rebut the presumption that disclosure was received within three days, which would increase costs to consumers because creditors and settlement agents would be forced to defend such litigation, and litigation costs would ultimately be passed on to consumers in the form of higher fees.

Credit union commenters recommended that the final rule establish a presumption of instant receipt based on electronic delivery in all cases, or in cases where consumers have agreed to receive electronic communications. The commenter explained that electronic communications are received nearly instantly after sending, and it is likely that individuals involved in important transactions will check their electronic communications more than once per day. One trade association representing credit unions explained that it is reasonable to assume that members who have agreed to receive electronic communications expect to receive disclosures by email, and that a consumer's agreement to receive notices electronically should constitute adequate notice of expected delivery. A credit union commenter stated that electronic delivery should not require evidence to defeat the presumption in any case. One non-depository lender recommended that the presumption of delivery for emailed disclosure be shortened to 24 hours.

Commenters asked for clarification on what forms of evidence could be used to demonstrate the consumer received the disclosures for purposes of demonstrating compliance or rebutting the three-day presumption (and, by extension, defeating such rebuttals). A large bank in an ex parte comment asked that the Bureau confirm that an applicant's representation to the creditor, such as a recorded verbal acknowledgement or a signed statement, could defeat the presumption (*i.e.*, to prove that they received it earlier, or later, than three days). A trade association representing settlement agents and the title insurance industry asked, if the disclosure is delivered by the United States Postal Service or a courier service, whether a delivery confirmation, signature confirmation service, return receipt, or certified mail, could rebut the presumption of receipt. The commenter also asked whether a certificate of mailing or track-and-confirm receipt could establish the date on which the disclosure was sent. The commenter also asked, if a signature is required for confirmation of receipt, whether the signature must be the signature of the person named as a party to the loan.

A software company commenter requested clarification on whether the day the disclosures are mailed or delivered counts as the first day for purposes of the delivery requirements in 19(f)(1)(iii). Commenters also requested clarification regarding how to deliver the Closing Disclosure when there are multiple consumers involved. Several trade associations representing banks and financial companies requested clarification that the three-day period begins when the Closing Disclosure is delivered to the "primary" consumer when there are multiple consumers. One trade association representing settlement agents asked whether a particular consumer could elect a different method of delivery than a co-borrower. Another commenter asked that if multiple consumers are to be obligated on the loan, whether all of them must sign a delivery receipt to confirm they have received the Closing Disclosure.

Final Rule

The Bureau has considered the comments on this aspect of the proposal and is modifying the proposed provision creating a presumption of receipt three business days after delivery. The final rule adheres to the statutory provision under MDIA. The final rule provides that, if the Closing Disclosure is mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is considered to have received the disclosure three business days after it is mailed or delivered. The final rule makes this change to reflect the standard for determining receipt set forth in TILA section 128(b)(2)(E), as amended by MDIA, in response to comments that indicated a presumption of receipt could delay closings and increase costs for consumers. This is the standard that currently applies to the final TILA disclosures under § 1026.19(a)(2).

When it issued the proposal, the Bureau reasoned that the presumption of receipt rule at proposed § 1026.19(f)(1)(iii) would provide additional encouragement for lenders to ensure that disclosures are received in a timely manner. Commenters provided feedback explaining that, to manage compliance risk associated with a presumption of receipt, creditors and settlement agents may incur additional costs and delay closings to ensure they have evidence of receipt. Accordingly, commenters requested clarification on the types of evidence that would be sufficient under the proposal, including an ex parte comment requesting clarification of whether a recorded verbal acknowledgment or a signed statement from the consumer would be sufficient to demonstrate compliance or withstand a challenge to the presumption of receipt.

In light of the variety of delivery methods and options offered by service providers, it is not feasible to define with sufficient clarity what evidence will demonstrate compliance or withstand a challenge to the presumption of receipt; such a determination would involve a factual inquiry. Without a bright-line standard or extensive regulatory guidance, the Bureau believes industry would likely seek to document evidence of receipt, such as through recorded verbal or written acknowledgements or affidavits, which may unnecessarily delay many transactions. The Bureau also is concerned that demonstrating compliance under the proposal could be especially difficult and costly in rural areas. Creditors and settlement agents in rural areas explained that long distances separate parties to a transaction, and that it is often difficult for creditors to obtain evidence that a consumer has, in fact, received a disclosure. By adhering to the statutory provision under MDIA, the final rule should facilitate compliance for creditors and settlement agents in these areas. Accordingly, the final rule modifies proposed § 1026.19(f)(1)(iii) so that the provision adheres to the statutory mailbox rule under TILA section 128(b)(2)(E) and the standard currently in Regulation Z § 1026.19(a)(2).

The final rule does not prevent creditors from arranging earlier delivery of the Closing Disclosure provided they ensure the consumer receives the disclosures no later than three business days before consummation, consistent with § 1026.19(f)(1)(ii) and (iii). Moreover, to accommodate changes that may occur between the time the Closing Disclosure is provided and consummation, the final rule has narrowed the triggers for new three-business-day waiting periods under the rule's redisclosure requirements, as discussed in the section-by-section analysis of § 1026.19(f)(2) below. The Bureau believes this change will further reduce the impact on industry and consumers in rural areas.

The final rule does not adopt separate rules or presumptions regarding the delivery of disclosures by overnight courier, electronic transmission, or other means. Although these methods may be faster than delivery by regular mail, the Bureau does not believe it is feasible to adequately identify satisfactory compliance in all cases. Nor does the Bureau believe it has sufficient information to identify a separate presumption of receipt for particular delivery methods, such as electronic delivery methods. However, a creditor or settlement agent is not required to use the three-business-day delivery standard to determine when the waiting period required by § 1026.19(f)(1)(iii) begins. Thus, if a creditor or settlement agent delivers the Closing Disclosure electronically consistent with § 1026.38(t)(3)(iii) or delivers the Closing Disclosure by overnight courier, the creditor or settlement agent may rely on evidence of actual delivery (such as documentation that the Closing Disclosure was received by certified mail or overnight delivery that uses a signature to accept delivery or email, if similar documentation is available) to determine when the three-business-day waiting period begins.

Some commenters requested clarification on when a Closing Disclosure is considered delivered for purposes of counting the three-business-day rule. For clarity and consistency with other provisions of § 1026.19(e) and (f), final § 1026.19(f)(1)(iii) provides generally that if the Closing Disclosure is not provided in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. Comment 19(f)(1)(iii)-1 also explains that the days are counted from the date on which the disclosures are placed in the mail. *See also* comment 19(f)(1)(ii)-2. Some commenters requested clarification regarding transactions involving multiple consumers. Final § 1026.17 sets forth the applicable requirements for such transactions and clarifies that the Closing Disclosure need only be given to one of the primary obligors, unless the transaction is subject to the right of rescission, in which case all consumers with the right to rescind must receive the closing disclosures. *See* section-by-section analysis of § 1026.17(d).

Final provisions. Accordingly, final § 1026.19(f)(1)(iii) provides that, if any disclosures required under § 1026.19(f)(1)(i) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. The heading of final § 1026.19(f)(1)(iii) has been modified to refer to “Receipt of disclosures,” which the Bureau believes is clearer than the proposed heading that would have referred to “Delivery.” As discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), the final rule adopts the specific definition of business day applicable to § 1026.19(f)(1)(iii) for purposes of the delivery requirements of the Closing Disclosure.

Comment 19(f)(1)(iii)-1 restates the requirement of § 1026.19(f)(1)(iii) and contains language similar to language in current comment 19(a)(2)(ii)-3, clarifying that, if the creditor delivers the disclosures under § 1026.19(f)(1)(iii) to the consumer in person, consummation may occur any time on the third business day following delivery. Comment 19(f)(1)(iii)-1 also clarifies that, if the creditor provides the disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 1026.19(f)(1)(ii)(A) begins. For consistency with comment 19(e)(1)(iv)-1, comment 19(f)(1)(iii)-1 also explains that the creditor may, alternatively, rely on evidence that the consumer received the Closing Disclosure earlier than three business days after mailing. The comment also includes a cross-reference to comment 19(e)(1)(iv)-1 for an example in which the creditor sends disclosures by overnight mail.

Comment 19(f)(1)(iii)-2 also has been modified to conform to final § 1026.19(f)(1)(iii) and contains a sentence substantially similar to the last sentence in current comment 19(a)(2)(ii)-3, clarifying that creditors that use electronic mail or a courier other than the United States Postal Service also may follow the approach for disclosures provided by mail described in comment 19(f)(1)(iii)-1. This language replaces proposed language that would have explained that the three-business-day presumption applies to methods of electronic delivery and that would have provided an illustrative example and an explanation that the creditor could demonstrate compliance by providing evidence that the consumer received an emailed disclosure earlier. Thus, if a creditor sends a disclosure required under § 1026.19(f) via email on Monday, pursuant to § 1026.19(f)(1)(iii) the consumer is considered to have received the disclosure on Thursday, three business days later. For consistency with comment 19(e)(1)(iv)-2, the comment also explains that the creditor may, alternatively, rely on evidence that the consumer received the emailed disclosures earlier than three business days. Comment 19(f)(1)(iii)-2 includes a cross-reference to comment 19(e)(1)(iv)-2 for an example in which the creditor emails disclosures and receives an acknowledgment from the consumer on the same day. Comment 19(f)(1)(iii)-2 adopts substantially all of the language in proposed comment 19(f)(1)(iii)-2 regarding a creditor's use of electronic delivery methods, with a revised reference to § 1026.38(t)(3)(iii) instead of § 1026.17(a)(1) to reflect the requirements applicable to the Closing Disclosure.

The final delivery provision under § 1026.19(f)(1)(iii) and comments 19(f)(1)(iii)-1 and -2 are consistent with section 105(a) of TILA. Specifically, the rule and commentary will help consumers avoid the uninformed use of credit by ensuring that consumers receive disclosures of the actual terms and costs associated with the mortgage loan transaction early enough that consumers have sufficient time to become fully informed as to the cost of credit. The final rule and commentary are also authorized under section 19(a) of RESPA because they will ensure more effective advance disclosure of settlement costs by requiring creditors to make sure that the disclosures are delivered to the consumer three business days before consummation. In addition, § 1026.19(f)(1)(iii) and comments 19(f)(1)(iii)-1 and -2 are consistent with section 1405(b) of the Dodd-Frank Act because the rule will improve consumer awareness and understanding of the mortgage loan transaction by ensuring that disclosures reflecting all of the terms and costs associated with their transactions are delivered to the consumer three business days in advance of consummation.

19(f)(1)(iv) Consumer's Waiver of Waiting Period Before Consummation

TILA and RESPA set forth different waiver provisions applicable to the final disclosures. Section 128(b)(2)(F) of TILA provides that the consumer may waive or modify the timing requirements for disclosures to expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. 15 U.S.C. 1638(b)(2)(F). Section 128(b)(2)(F) further provides that: (1) the term "bona fide personal financial emergency" may be further defined in regulations issued by the Bureau; (2) the consumer must provide the creditor with a dated, written statement describing the emergency and specifically waiving or modifying the timing requirements, which bears the signature of all consumers entitled to receive the disclosures; and (3) the creditor must provide, at or before the time of waiver or modification, the final disclosures. 15 U.S.C. 1638(b)(2)(F). This provision is implemented in current § 1026.19(a)(3) of Regulation Z.

Neither RESPA nor Regulation X contains a similar provision for emergencies. Instead, RESPA section 4 provides the Bureau authority to issue regulations under which consumers may waive their rights to receive the RESPA settlement statement at or before settlement. Regulation X provides that the settlement agent shall deliver the completed RESPA settlement statement at or before the settlement, unless the borrower waives the right to delivery of the completed RESPA settlement statement. If the borrower exercises the waiver, the completed RESPA settlement statement must be mailed or delivered as soon as practicable after settlement. *See* 12 CFR 1024.10(b), (c).

The Bureau explained in the proposal that, although waivers based on a bona fide personal financial emergency are rare, the waiver provision serves an important purpose. Specifically, consumers should be able to waive the protection afforded by the waiting period if, in the face of a financial emergency, the waiting period does more harm than good. Accordingly, the Bureau proposed § 1026.19(f)(1)(iv), which would have allowed a consumer to waive the three-business-day waiting period in the event of a bona fide personal financial emergency. The provision would have required that the consumer have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period, and that whether these conditions are met is determined by the facts surrounding individual situations. Further, each consumer who is primarily liable on the legal obligation would have been required to sign the written statement for the waiver to be effective.

Proposed comment 19(f)(1)(iv)-1 would have stated that, a consumer may modify or waive the right to the three-business-day waiting period required by § 1026.19(f)(1)(ii) only after the creditor makes the disclosures required by § 1026.19(f)(1)(i). This comment was modeled after comment 19(a)(3)-1, which was based on the text in TILA, and is consistent with commentary on waiving the rescission period and the pre-consummation waiting period required for certain high-cost mortgage transactions. The comment would have set forth one example: the imminent sale of the consumer’s home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency. The Bureau sought comment on the nature of waivers based on bona fide personal financial emergencies and whether the bona fide personal financial emergency exception is needed more in some contexts than in others (*e.g.*, in refinance transactions or purchase money transactions).

Comments

Consumer advocates and industry commenters differed in their views on the waiver proposal. Two consumer advocacy groups submitting a joint comment noted that the bona fide personal financial emergency waiver would protect consumers sufficiently from serious harm caused by a delayed closing. While they noted that consumers may be inconvenienced by closing delays, they stated that a waiver should not be available for mere inconveniences, and that a narrow waiver provision would provide industry an incentive to avoid such inconveniences without risking the potential that a flexible waiver provision could be abused.

By contrast, many industry comments expressed the view that the proposed waiver provision was inadequate. These commenters believed the bona fide personal financial emergency waiver was too restrictive to account for the variety of reasons a consumer may wish to waive the timing provisions of the Closing Disclosure. Creditors noted that they are already reluctant to accept bona fide personal financial emergency waivers under the current rescission rules because the lack of examples could subject them to possible TILA liability. A trade association representing banks explained that, due to TILA liability, creditors are often reluctant to honor a waiver where a borrower's attested circumstances do not rise to the level of a clear emergency but instead appear to be inconveniences.

Some industry commenters, including a title insurance company and a professional association representing attorneys, opposed a rule that relied on a waiver because of the potential for consumer abuse inherent in a waiver and the reputational and legal risk incurred by settlement agents who may need to consider whether to accept a waiver. Commenters explained that consumers likely would feel forced into signing a waiver on most closings that would undermine the purpose of the three-business-day period. Some settlement agent commenters noted the potential for consumer abuse inherent in waiver mechanisms, but they believed the Bureau nonetheless could craft a waiver provision to deal with this risk.

Commenters critical of the proposed waiver provision generally recommended several approaches to broaden the waiver provision, including expanding the bona fide personal financial emergency provision to cover additional "emergencies," permitting a waiver for "non-emergency" circumstances, and permitting the consumer and the seller to jointly sign a waiver in the event of a closing being necessary to facilitate a coinciding settlement. One large bank stated that a flexible waiver would be necessary even if the Bureau expanded exemptions in the final rule because situations necessitating a waiver would arise that fall outside of the exemptions. The commenter stressed the consumers should be free to make their own decisions about whether to waive the timing requirements in the rule.

Commenters, including a GSE, asked that the Bureau consider a variety of examples that would either constitute a bona fide personal financial emergency or justify some other more flexible waiver, including the following: the consumer may miss a mandatory military service deadline; timely receipt of the Closing Disclosure would be impracticable because the consumer is traveling; the consumer expends financial resources to secure emergency housing or make other logistical arrangements; the consumer needs timely access to funds to satisfy a legal judgment or other legal arrangement, for an emergency medical procedure, or to repair a heating system in the winter; the consumer loses the opportunity to purchase a home because a sale contract expires; the consumer faces financial costs or economic hardship, such as the expiration of an interest rate lock, additional interest rate lock extension fees, additional prorated taxes, or higher interest payments on an existing loan in the case of refinancing; or a delay will affect the seller, such as by delaying a separate coinciding closing.

Some commenters suggested that a more flexible waiver should be available in particular circumstances. A large bank, a title insurance company, and settlement agent commenters recommended that a flexible waiver be available to consumers where the rule would trigger additional redisclosure waiting periods so the consumer could avoid the costs associated with a closing delay, such as the loss of a rate lock or penalties associated with a breach of a purchase agreement. A trade association representing banks and financial companies believed that a more flexible waiver should be permitted when a consumer is receiving a mortgage loan that meets the criteria of a “qualified mortgage” under the Bureau’s rules. Several commenters requested that a flexible waiver be available for transactions subject to the three-business-day right to rescind under § 1026.23. A trade association representing credit unions and a large bank suggested non-cash-out and term-reduction refinancings presented less consumer risk and that consumers should be able to waive the rule's timing requirements for such transactions. A credit union commenter stated that the waiver provision applicable to the Closing Disclosure should be consistent with the waiver provision applicable to the Loan Estimate.

A large bank believed creditors should be permitted to establish processes and controls around the issuance of waivers, while a settlement agent and a credit union commenter recommended that the Bureau develop disclaimer language for a waiver to mitigate the risk of abuse, and a mortgage broker commenter believed consumers should be able to acknowledge at closing that they have waived the rule's timing requirements. A trade association representing various mortgage professionals believed the risk of abuse should be addressed through enforcement rather than restrictive regulations.

Several commenters requested that the Bureau provide clarification on the mechanics for issuing a waiver. A law firm commenter requested that the final rule clarify how a waiver is obtained and what is required for approval. Various settlement agent commenters and a title insurance company commenter indicated that the seller should be able to exercise a waiver, while a trade association representing settlement agents and a community bank recommended that consumers and sellers should be required to execute a waiver to ensure that all parties can consider the effects of and necessity for a waiver.

Final Rule

The final rule adopts final § 1026.19(f)(1)(iv) substantially as proposed, with technical revisions discussed further below. The Bureau believes the bona fide personal financial emergency provision is the appropriate waiver mechanism for the Closing Disclosure, rather than the broader waiver currently provided for under Regulation X § 1024.10(c) with respect to the RESPA settlement statement. There is significant consumer interest in ensuring consumers receive the Closing Disclosure at least three business days before consummation, given the complexity and significance of mortgage transactions. Final TILA disclosures provided three business days prior to consummation under the amendments made to TILA by MDIA are already subject to the bona fide personal financial emergency waiver. This waiver provision will ensure that consumers only forego their ability to review the Closing Disclosures when they are presented with a financial emergency. In addition, the Bureau believes that implementing TILA's waiver provision is necessary to implement the delivery requirements for the integrated disclosures under MDIA and the Dodd-Frank Act.

The Bureau believes the bona fide personal financial emergency waiver should apply to all transactions subject to § 1026.19(f), and not just those loans subject to MDIA's three-business-day timing requirement (*i.e.*, loans for which the previously disclosed APR becomes inaccurate). While a more flexible waiver is available under Regulation X currently with respect to the RESPA settlement statement, the Closing Disclosure is different in nature because it integrates information derived from both RESPA and TILA. The final rule requires that the Closing Disclosure be provided three business days before consummation in all cases, as discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(A). As noted in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), advance receipt of the Closing Disclosure provides important consumer protections, fulfills the goals of the integration mandate, and is in line with the goal of improving consumer awareness through disclosures for residential mortgage loans under sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. The Bureau is concerned that a broader waiver for transactions not covered by MDIA's timing requirements could be abused and undermine these benefits. This risk of abuse was noted by consumer advocates and several industry commenters, as described above.

The Bureau recognizes that the limited guidance on what constitutes a bona fide personal financial emergency may limit the use of the waiver, but the Bureau believes the waiver should be reserved for limited use: when a consumer faces a true financial emergency, as distinct from an inconvenience. One commenter questioned whether the risk of abuse should be addressed through restrictive regulatory provisions instead of through enforcement activities. The Bureau believes a limited waiver provision in the final rule is an appropriate tool for addressing the risk of abuse. Because determining the circumstances surrounding the issuance of waivers would involve a fact-intensive inquiry, it may be difficult to identify whether consumer abuse occurred on any particular occasion. The Bureau is concerned that a more flexible waiver provision would make it more difficult to detect abuse.

The final rule does not include standardized disclaimer language, as suggested by some commenters. The Bureau believes it would be impracticable to provide standardized language in light of the unique characteristics of each mortgage loan transaction. In addition, the Bureau does not believe the risk of abuse would be mitigated by a statement provided at closing acknowledging a waiver. To be meaningful, the Bureau believes that waivers should be provided with the delivery of the Closing Disclosure and should be based on a justification contained in a written statement provided by the consumer and signed by all consumers primarily liable on the legal obligation. Thus, final § 1026.19(f)(1)(iv) prohibits the use of printed forms for this purpose.

A more flexible waiver standard might offer some consumer benefits. On balance, however, the Bureau does not believe it is needed to protect consumers from unnecessary delays. For example, additional delays and inconveniences for some consumers that would have been required by the proposed redisclosure requirements could be avoided by a more flexible waiver if such a redisclosure requirement were in place, as one commenter suggested. However, the Bureau believes the final rule's modification to the proposal's requirement for additional waiting periods and other disclosure requirements under § 1026.19(f) substantially reduce the likelihood of costly closing delays, thereby reducing the need for a broader waiver.[229] With respect to the circumstances that would trigger redisclosure waiting periods under the final rule, the Bureau believes a waiver should be available only in the event of a bona fide personal financial emergency. The Bureau believes the events triggering a new waiting period in § 1026.19(f)(2) have the potential to pose serious, long-term risk to consumers, and thus waivers in these cases should be limited.

In addition, the Bureau believes reliance on the bona fide personal financial emergency waiver provision will facilitate compliance better than a two-tiered waiver regime, in which transactions not subject to MDIA's timing requirements would be subject to a broader waiver. For example, a two-tiered waiver provision applicable to the Closing Disclosure would create a different standard for waivers than the standard for the Loan Estimate.

Regarding comments requesting additional examples of a bona fide personal financial emergency, the example in comment 19(f)(1)(iv)-1 is illustrative and not exhaustive. For example, situations offered by commenters could constitute a bona fide personal financial emergency, such as a sudden, unforeseen mandatory military service deadline or an unforeseen

[229] *See, e.g.*, section-by-section analysis of § 1026.19(f)(1)(i) (best information reasonably available standard), (f)(1)(iii) (delivery), (f)(2)(i) and (ii) (revised triggers for the redisclosure waiting period), and (f)(2)(iii) (changes for post-consummation events).

medical emergency, depending on the facts and circumstances of an individual case.

One commenter stated that a more flexible waiver should be permitted when a consumer is receiving a qualified mortgage under the Bureau's ability-to-repay rules. While a qualified mortgage may present less risk that a consumer lacks an ability to repay the loan, a home mortgage transaction is a complex, long-term financial commitment that most consumers enter into only infrequently. Thus, the Bureau believes consumers receiving qualified mortgages will benefit from time to review the Closing Disclosure, to ensure that the loan terms and settlement charges offered contain no significant surprises.

The final rule does not provide for a broader waiver for transactions subject to the right of rescission, as requested by several commenters. A large bank and a trade association representing credit unions stated that non-cash-out and term-reduction refinancings presented less consumer risk and that consumers should be able to waive the rule's timing requirements for those transactions. The Bureau recognizes that a pre-consummation waiting period may, in some cases, lengthen the disbursement of funds for transactions subject to the right of rescission. However, as explained in the section-by-section analysis of § 1026.19(f)(1)(i)(A), the Bureau believes the pre- and post-consummation periods serve distinct purposes, and that the risk of closing delays for such transactions is limited, particularly in light of the modifications made to proposed § 1026.19(f).

Several commenters requested that the Bureau provide clarification on the mechanics for issuing a waiver. A law firm commenter requested that the final rule clarify how a waiver is obtained and what is required for approval. The requirements for obtaining a waiver are set forth in § 1026.19(f)(1)(iv) and are clarified in comment 19(f)(1)(iv)-1. Pursuant to § 1026.19(f)(1)(v), settlement agents providing consumers with the disclosures required under

§ 1026.19(f)(1)(i) also would need to comply with § 1026.19(f)(1)(iv), although creditors would remain responsible for compliance, pursuant to § 1026.19(f)(1)(v).

The final rule does not alter the mechanics for accepting waivers by permitting or requiring sellers to execute a waiver along with, or independent of, the consumer. Several settlement agents and a title insurance company indicated that the seller should be able to exercise a waiver; and a trade association representing settlement agents and a community bank recommended that consumers and sellers should be required to execute a waiver to ensure that all parties can consider the effects of and necessity for a waiver. The Bureau recognizes that sellers have interests that may be frustrated by the waiting period. However, the waiting period is a critical protection to ensure that consumers who are about to take on significant long term financial commitments have time to review the terms of the commitment and the settlement costs without being pressured. The Bureau is concerned that, if sellers could waive the waiting period or could jointly exercise the waiver, consumers would be rushed into accepting loan terms that they do not understand and settlement costs that they did not expect to incur.

Final § 1026.19(f)(1)(iv) and comment 19(f)(1)(iv)-1 are adopted substantially as proposed for the reasons stated in the proposal and above. The final rule and commentary include technical amendments to the first sentence of § 1026.19(f)(1)(iv) to conform to revisions regarding the three-business-day redisclosure waiting period under § 1026.19(f)(2)(ii). Specifically, proposed § 1026.19(f)(1)(iv) would have referred to the three-business-day waiting period "for the disclosures required under paragraph (f)(1)(ii)" of § 1026.19. Because a three-business-day period is required under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii), the final rule refers to the three-business-day waiting periods under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii). Comment 19(f)(1)(iv)-1 includes a similar reference to § 1026.19(f)(2)(ii). In addition, final

§ 1026.19(f)(1)(iv) includes a technical revision for clarity and consistency with a similar provision in § 1026.19(e) (*i.e.*, that a consumer can modify or waive "the" waiting period, instead of "a" waiting period).

Final § 1026.19(f)(1)(iv) and comment 19(f)(1)(iv)-1 are consistent with TILA section 128(b)(2)(F), which provides that the consumer may waive or modify the timing requirements for disclosures to expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. Final § 1026.19(f)(1)(iv) and comment 19(f)(1)(iv)-1 are adopted pursuant to the Bureau's legal authority under sections 105(a) of TILA, 19(a) of RESPA, 1032(a) of the Dodd-Frank Act, and, for residential mortgage transactions, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. The Bureau has considered the purposes for which it may exercise its authority under section 105(a) of TILA and, based on that review, believes that final rule and commentary are appropriate. The final rule and commentary will help consumers avoid the uninformed use of credit by ensuring that consumers receive disclosures of the actual terms and costs associated with the mortgage loan transaction early enough that consumers have sufficient time to become fully informed as to the cost of their credit, subject to a limited waiver. The final rule and commentary are consistent with section 129B(e) of TILA because failing to provide borrowers with enough time to become fully informed of the actual terms and costs of the transaction is not in the interest of the borrower, except where the borrower determines otherwise if necessary to meet a bona fide personal financial emergency.

The Bureau also has considered the purposes for which it may exercise its authority under section 19(a) of RESPA and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will ensure more effective advance disclosure of settlement costs by requiring creditors to disclose the actual settlement costs associated with the transaction three business days before consummation, subject to a limited waiver provision.

The final rule and commentary are consistent with Dodd-Frank Act section 1032(a) because the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan and settlement services if consumers receive the disclosures reflecting the terms and costs associated with their transactions three business days before consummation, unless they determine to waive or modify these timing requirements if necessary to meet a bona fide personal financial emergency.

In addition, the Bureau has considered the purposes for which it may exercise its authority under section 1405(b) of the Dodd-Frank Act and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will improve consumer awareness and understanding of the mortgage loan transaction by ensuring that consumers receive the disclosures reflecting the terms and costs associated with their transactions three business days in advance of consummation, subject to a limited waiver. The final rule and commentary also will be in the interest of consumers and in the public interest because they may eliminate the opportunity for bad actors to surprise consumers with unexpected costs at the closing table, when consumers are less able to question such costs, unless consumers determine to waive or modify these timing requirements if necessary to meet a bona fide personal financial emergency.

19(f)(1)(v) Settlement Agent

TILA and RESPA impose requirements to provide disclosures on different parties. TILA and Regulation Z require that creditors provide the TILA disclosures, but neither TILA nor

Regulation Z imposes disclosure requirements on settlement agents. In contrast, the RESPA settlement statement requirement generally applies to settlement agents, as implemented in Regulation X § 1024.10. Section 1032(f) of the Dodd-Frank Act requires the Bureau to propose for public comment rules that combine the disclosures required under TILA and sections 4 and 5 of RESPA. Dodd-Frank Act sections 1098 and 1100A amended TILA and RESPA to mandate that the Bureau integrate the disclosure requirements under TILA and RESPA, but Congress did not reconcile the division of responsibilities between creditor and settlement agent in TILA and RESPA.

As recognized in the proposal, persons who conduct settlements, such as settlement agents and closing attorneys, play a valuable role in the real estate settlement process. Settlement agents may be able to assist consumers with issues that arise during a real estate settlement perhaps even more effectively than creditors. However, the Bureau explained in the proposal that it was concerned that settlement agents may not be able to fulfill the obligations imposed by TILA. The Bureau also expressed concern that, if the responsibility to provide the disclosures were divided, consumers would receive duplicative, inaccurate, or unreliable disclosures. The Bureau explained that this result would be contrary to the TILA-RESPA integration mandate.

Accordingly, the Bureau proposed two alternative approaches to the responsibility for providing the Closing Disclosure. Alternative 1 would have made the creditor solely responsible for the provision of the disclosures required by § 1026.19(f). Alternative 2 would have permitted a settlement agent to provide the disclosures required under § 1026.19(f)(1)(i), provided the settlement agent complies with all requirements of § 1026.19(f) as if it were the creditor. Alternative 2 would have required the creditor and settlement agent to agree on a division of responsibilities regarding the delivery of the disclosures. To implement alternative 2, the Bureau proposed § 1026.19(f)(1)(v), which would have provided that a settlement agent may provide a consumer with the disclosures required under § 1026.19(f)(1)(i), provided the settlement agent complies with all requirements of § 1026.19(f) as if it were the creditor. The Bureau proposed alternative 2 pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act.

Proposed § 1026.19(f)(1)(v) would have required the creditor to ensure that the disclosures are provided in accordance with the requirements of § 1026.19(f). Accordingly, alternative 2 would not have relieved the creditor of its responsibility under § 1026.19(f). Thus, the creditor would have remained responsible for the disclosures provided under § 1026.19(f). *See* proposed comment 19(f)(1)(v)-3. Disclosures provided by a settlement agent in accordance with the requirements of § 1026.19(f) would have satisfied the creditor's obligation under § 1026.19(f)(1)(i).

Proposed comment 19(f)(1)(v)-1 would have clarified that a settlement agent may provide the disclosures required under § 1026.19(f)(1)(i) instead of the creditor. By assuming this responsibility, the settlement agent would become responsible for complying with all of the relevant requirements as if it were the creditor, meaning that "settlement agent" should be read in the place of "creditor" for all the relevant provisions of § 1026.19(f), except where the context indicates otherwise. The commentary would have clarified that the creditor and settlement agent must effectively communicate to ensure timely and accurate compliance with the requirements of § 1026.19(f)(1)(v).

Proposed comment 19(f)(1)(v)-2 would have clarified that if a settlement agent issues any disclosure under § 1026.19(f), the settlement agent must comply with the requirements of

§ 1026.19(f). This proposed alternative comment also would have clarified that the settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f), provided that the consumer receives one single disclosure form containing all of the information required to be disclosed pursuant to § 1026.19(f)(1)(i), in accordance with the other requirements in § 1026.19(f), such as requirements related to timing and delivery. The comment also would have included illustrative examples.

Proposed comment 19(f)(1)(v)-3 would have explained that if a settlement agent provides disclosures required under § 1026.19(f) in the creditor's place, the creditor remains responsible under § 1026.19(f) for ensuring that the requirements of § 1026.19(f) have been satisfied. The comment would have provided an example illustrating that the creditor does not comply with § 1026.19(f) if the settlement agent does not provide the disclosures required under § 1026.19(f)(1)(i), or if the consumer receives the disclosures later than three business days before consummation.

The proposed comment also would have clarified that the creditor does not satisfy the requirements of § 1026.19(f) if it provides duplicative disclosures, and clarified that a creditor does not satisfy its obligation by issuing disclosures required under § 1026.19(f) that mirror ones already issued by the settlement agent for the purpose of demonstrating that the consumer received timely disclosures. The comment would have further clarified that the creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor, and that disclosures provided by a settlement agent in accordance with § 1026.19(f)(1)(v) satisfy the creditor's obligation under § 1026.19(f)(1)(i).

Proposed comment 19(f)(1)(v)-4 would have clarified that the settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f). The comment would have further clarified that the consumer must receive one single disclosure form containing all of the information required to be disclosed pursuant to § 1026.19(f)(1)(i), in accordance with the other requirements in § 1026.19(f), such as requirements related to timing and delivery. The proposed comment also would have included illustrative examples.

The proposed rule was designed to carry out TILA's goal of promoting the informed use of credit. The Bureau explained that the involvement of a settlement agent could result in increased consumer awareness and more meaningful disclosure of credit terms, consistent with section 105(a) of TILA. The proposed regulation also was structured to achieve RESPA's purposes by resulting in more effective advance disclosure of settlement costs, consistent with section 19(a) of RESPA. The Bureau further stated that the proposed regulation also could improve consumer understanding and awareness of the transaction by permitting the Closing Disclosure to be completed and provided by settlement agents, who often assist consumers during a real estate closing, which is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b). The Bureau invited comment on other methods of dividing responsibility between creditors and settlement service providers, provided that such other methods ensure that consumers are provided with prompt, accurate, and reliable disclosures.

Comments

Overview. The Bureau received extensive public comment and ex parte submissions from across various sectors of the real estate and mortgage lending industries regarding responsibility for providing the Closing Disclosure. Commenters provided general feedback on the relative merits of creditor and settlement agent involvement in preparing the Closing Disclosure and more specific feedback on alternatives 1 and 2, and other alternatives for dividing responsibility. In addition, commenters provided feedback on the creditor's responsibility for ensuring compliance with § 1026.19(f) (which would have been required under both alternatives 1 and 2) and State law issues. Commenters also requested clarification on certain issues.

In general, commenters supporting creditor preparation of the Closing Disclosure observed that creditors would be better able to make loan-related disclosures and ensure compliance. A professional association representing attorneys, a large bank, and escrow agent commenters explained that creditors are in a better position to provide and explain loan-related disclosures. A large bank commenter also explained that creditors would be better positioned to facilitate consumer contact and ensure timely delivery of the disclosures three business days before consummation. A large bank commenter explained that settlement agents likely would be unable to complete the Closing Disclosure if the forms were in "dynamic" rather than "static" form. A community bank commenter explained that allowing a party other than the creditor to generate the Closing Disclosure would increase costs and delay the closing process, and thereby inconvenience and increase costs to consumers. In addition, a commenter from a company that provides escrow and title software argued that the Closing Disclosure should be provided by the creditor because the complexity of disclosures would make coordination difficult.

On the other hand, many settlement agent commenters questioned whether the creditor would act in the best interests of the consumer or other parties, such as sellers. A trade association representing settlement agents and the title insurance industry and various law firm commenters suggested that, without the role of an independent review or preparation of the Closing Disclosure by the settlement agent, creditors could misstate the charges of third parties, and that third parties are unable to correct such mistakes. The trade association commenter further explained that creditors and affiliated service providers would share the costs of creditor compliance risk, which would increase overall risk to creditor-affiliated businesses. Some settlement agent commenters pointed out that settlement agent preparation of the Closing Disclosure would not pose significant consumer risk because revisions to settlement costs are typically minor, whereas revisions to loan costs can impose significant costs to consumers.

Commenters also were concerned that creditor preparation of the Closing Disclosure would lead to conflicts between settlement agents and creditors, such as those arising from potentially conflicting closing instructions, or conflicts over the underwriting of title insurance if a creditor-prepared Closing Disclosure contained errors. Other settlement agent commenters were concerned that they may be unable to understand a creditor-prepared Closing Disclosure or explain it to other parties at settlement. Additional comments on creditor preparation of the Closing Disclosure are discussed in greater detail below.

In general, many commenters emphasized that settlement agents have unique expertise in conducting settlements and preparing settlement cost figures, and that preserving their role in the transaction would be critical to ensuring the efficient operation of closings. Various law firm commenters, trade associations representing attorneys, individual settlement agents, real estate agents, and mortgage brokers explained that only licensed real estate attorneys or settlement agents should handle closings because they are subject to State regulation and have expertise in local customs and disbursement activities. Commenters representing the views of law firms, credit unions, settlement agents, trade associations representing settlement agents and the title insurance industry, real estate agents, and title insurance companies explained that because of settlement agents' expertise in conducting closings and their coordination of multiple parties to the transaction, their preparation of the Closing Disclosure would be more efficient than creditor preparation. For example, settlement agent commenters expressed concern that closings would be delayed and costs would increase if settlement agents had to coordinate with creditors when handling last-minute changes to the Closing Disclosure at settlement.

Many commenters, including settlement agents, attorneys, law firms, title insurance companies, real estate brokers, and trade associations representing settlement agents and the title insurance industry stressed that the settlement agent serves an important consumer protection function by acting as a neutral, independent third party who verifies the creditor's figures and has the best interests of the consumer and all other parties in mind.[230] Commenters were concerned that creditor preparation of the Closing Disclosure would be a conflict-of-interest. For example, one trade association representing settlement agents and various law firm commenters raised the possibility that, without the role of an independent review or preparation of the Closing Disclosure by a settlement agent, creditors could misstate fees of third-party settlement service providers.

Other settlement agents, however, were concerned that making settlement agents responsible for the Closing Disclosure would conflict with the settlement agent's role as a neutral third party whose duty is limited to following closing instructions from the creditor and other parties to the real estate transaction. Additional comments on settlement agent preparation of the Closing Disclosure are discussed in greater detail below.

Support for alternative 1. Several non-depository lenders, a mortgage compliance company, and an individual consumer explained that alternative 1 would relieve creditors of TILA liability for the actions of settlement agents; whereas, under alternative 2, creditors would

[230] As discussed below in the section-by-section analysis of § 1026.19(f)(4), many settlement agent commenters also raised concerns about a creditor's involvement in preparing the seller's portion of the Closing Disclosure. Commenters were concerned that sellers may not want to provide sensitive information to creditors that owe them no duty.

have an obligation to supervise settlement agents but still assume all legal liability. A non-depository lender explained that, pursuant to CFPB Bulletin 2012-03, creditors already are obligated to supervise settlement agents as "service providers."[231] The mortgage compliance company commenter asserted that, if settlement agents were allowed to deliver the Closing Disclosure, the final rule would have to create a safe harbor for the creditor for the settlement agent's failure to satisfy regulatory requirements.

Some settlement agent and escrow agent commenters perceived benefits to creditor responsibility for the Closing Disclosure under alternative 1. Commenters explained that alternative 1 would encourage creditors to take more responsibility for the efficient operation of closings, reduce creditor-caused delays, and ensure consumers receive more accurate information about closing costs. Another settlement agent commenter believed that ensuring creditor responsibility would improve regulators' ability to supervise for compliance. One commenter pointed out that creditors are already familiar with evaluating settlement costs because they often "approve" the RESPA settlement statement before it is provided to borrowers. In addition, some settlement agents explained that creditors are in the best position to ensure the accuracy of the Closing Disclosure because they will be in control of the Loan Estimate and are responsible for complying with the accuracy requirements in § 1026.19(e)(3), and because they are familiar with settlement costs, consistent with the current practice of approving the RESPA settlement statement.

In addition to ensuring creditor accountability, commenters representing settlement agents, escrow agents, and related trade associations explained that alternative 1 would relieve

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[231] *See* U.S. Consumer Fin. Prot. Bureau, Bulletin 2012-03 (2012), available at http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

them of liability for the Closing Disclosure and would allow them to play a more traditional role related to conducting closings.[232] In particular, a trade association representing escrow agents supported alternative 1, because it believed alternative 2 could impose new creditor duties on settlement agents, which would be in conflict with the settlement agent's traditional role as a neutral third party. An escrow agent commenter explained that settlement agents do not have expertise in loan products and should not share in liability that applies to creditors. The commenter further explained that settlement agent responsibility for the Closing Disclosure would impose burdens on settlement agents because it would require that they coordinate with creditors to develop an accurate disclosure.

Concerns with alternative 1. Many commenters representing settlement agents, title insurance companies, real estate agents, and trade associations representing attorneys, settlement agents, and the title insurance industry were opposed to alternative 1 because they were concerned it would eliminate or significantly reduce the settlement agent's role, result in inefficient closings, and increase risk to consumers and the market.

Settlement agent and title insurance industry commenters were concerned that alternative 1 would reduce the availability of settlement agents, which would require consumers in some parts of the country would have to travel long distances or use mobile notaries because local settlement agents would no longer be available. Many settlement agent commenters also maintained that their ability to prepare the Closing Disclosure serves an important consumer protection function and that alternative 1 would present a conflict-of-interest if the creditor prepared the Closing Disclosure. Numerous settlement agent commenters, particularly attorneys

[232] However, a trade association representing settlement agents explained that it would support alternative 1 only if the Bureau could protect independent settlement agents from creditor consolidation that they believed could result from alternative 1. *See* the discussion of commenters supporting alternative 2.

and related trade associations, maintained that creditor preparation would conflict with various State laws regulating the conduct of settlements and the practice of law and could place attorneys who conduct settlements in the conflicted position of supervising a creditor's unauthorized practice of law.

Various commenters representing settlement agents, a real estate agent, title insurance companies, attorneys, credit unions, community banks, and various trade associations representing creditors, settlement agents, and the title insurance industry were concerned that alternative 1 would increase coordination costs for industry because it would shift settlement activities to creditors, introduce unnecessary complexity to the settlement process, delay the underwriting of title insurance, delay closings, and increase costs and risk to consumers. These commenters emphasized that settlement agents have unique expertise in local customs and procedures, are subject to State regulation, and are in the best position to prepare settlement cost disclosures because of their role in preparing the disbursement statement at closings. Community bank and credit union commenters were concerned that alternative 1 would require creditors to assume more responsibility for settlement activities and require that they hire staff attorneys licensed to practice in multiple jurisdictions, which would increase costs that would be passed on to consumers. Attorneys and trade associations representing attorneys shared these concerns. Commenters also explained that, while settlement agents likely would continue to provide collection and disbursement activities even under alternative 1, creditors would be required to document those activities on the Closing Disclosure. A settlement agent commenter stressed that settlement agents would be burdened even if a creditor were solely responsible for the Closing Disclosure because the settlement agent would likely be the party responsible for answering consumers' questions about the Closing Disclosure, but that they would have difficulty explaining a creditor-prepared form.

Finally, commenters noted that it was difficult to analyze the potential impact alternative 1 would have on the market. Commenters asserted that the Bureau did not provide sufficient analysis on the impact of alternative 1. A trade association representing the settlement agent and title insurance industry stated that the Bureau did not provide sufficient guidance about its expectations regarding creditor-settlement agent responsibility. A member of Congress stated that the Bureau did not analyze the impact of assigning sole responsibility to creditors would have on the settlement agent industry.

Support for alternative 2. Alternative 2 generally received broader support from industry commenters relative to alternative 1, although many commenters requested that the Bureau consider modifying alternative 2, as discussed below. Many commenters, including large banks, credit unions, community banks, settlement agents, related trade associations, and two consumer advocacy groups submitting a joint comment explained that alternative 2 most closely reflects current industry practice in which the creditor relies on settlement agent expertise and efficiency. Some settlement agent commenters noted that currently settlement agents must submit RESPA settlement statements to the creditor for approval, and that alternative 2 reflected this practice. Settlement agent commenters emphasized that they are in a better position than creditors to prepare the Closing Disclosure because they receive information from third parties to the transaction, typically compute charges, such as recording and transfer charges, and handle payoffs to ensure marketable title is conveyed. A number of real estate agent commenters supported alternative 2 because it would provide for more efficient closings when an out-of-State creditor is involved. Settlement agents, a trade association representing settlement agents, and mortgage brokers also expressed support for alternative 2 because it would preserve their role in the transaction and mitigate the potential for creditor conflicts-of-interest.[233]

Commenters also observed that alternative 2 would allow creditors and settlement agents flexibility in determining how to divide responsibility and selecting the delivery option that best serves consumers, which they expected would reduce implementation costs, discrepancies on settlement disbursements statements, and impacts on small businesses. In particular, credit union commenters explained that, in some cases, credit unions may choose to close a loan in-house to reduce closing costs, while in other cases, they may choose to have a settlement agent complete transactional information. Credit union commenters explained that alternative 2 allows creditors to rely on settlement agents when needed, unlike alternative 1, which they believed would require creditors to hire staff attorneys to perform closings in multiple jurisdictions, increasing costs and limiting their ability to perform closings nationwide. A trade association representing banks and financial companies believed that this flexibility in dividing responsibility was sensible in light of creditor liability for exceeding tolerances under RESPA and other liability under TILA. However, the commenter also noted that the Bureau should consider making settlement service providers responsible for the accuracy of their information, for exceeding tolerances and otherwise for bearing responsibility for their role in the transaction.

Concerns with alternative 2. Creditor commenters, including large banks and community banks, expressed concern that creditors would retain ultimate liability for the Closing Disclosure under alternative 2, notwithstanding settlement agent participation. These commenters were concerned about their liability for settlement cost information outside of their control. A

[233] The trade association commenter noted in its comment letter that it preferred making creditors responsible for the form. However, this commenter explained that it would support alternative 2 if the Bureau could not protect the settlement agent industry from creditor consolidation of the industry as a result of making creditors responsible for the form, because of the threat of creditor conflict-of-interest during the settlement process.

community bank commenter was concerned that a creditor would not be able to manage this risk if consumers shop for their own settlement agent. A nonbank lender suggested that alternative 2 would affect the timeliness of closings and increase the cost of the transaction because creditor liability would mean the creditor would still need to review the Closing Disclosure even if the settlement agent provided the information.

Settlement agent commenters expressed concern with creditor responsibility under alternative 2. Settlement agents were concerned that, like alternative 1, alternative 2 would lead to greater creditor control of the settlement process, such as by determining the scope of settlement agent involvement in the Closing Disclosure. Settlement agents also expressed concern that creditors, to manage their liability risk, would likely apply rigorous audit procedures to settlement agents and would be likely to sue settlement agents for compliance failures. Settlement agents also explained that creditors under alternative 2 would have to hire and train additional staff in the settlement process, which would result in higher costs being passed on to consumers.

In addition to concerns with creditor responsibility, some settlement agent commenters expressed concern with their own liability under alternative 2. In particular, several settlement agent commenters expressed opposition to proposed comment 19(f)(1)(v)-1, which would have clarified that a settlement agent may provide the disclosures instead of the creditor, but by assuming this responsibility, it becomes responsible for complying with all of the relevant requirements as if it were the creditor. One commenter who served as a panelist on the Small Business Review Panel indicated that assuming creditor liabilities and responsibilities would require settlement agents to increase their fees substantially.

Commenters representing creditors, settlement agents, and a software company explained that, to the extent they must coordinate to prepare a Closing Disclosure, creditors and settlement agents would have to develop software systems to exchange information between creditor and settlement agent systems that do not currently communicate with each other. Industry commenters also indicated that such systems would have to address the privacy implications of sharing potentially sensitive information.

Commenters representing a large bank, a trade association representing banks, settlement agents, attorneys, and a professional association representing attorneys indicated that settlement agents currently lack systems to generate TILA disclosures and that settlement agents may not be able to meet the technology requirements necessary to generate a Closing Disclosure or exchange information with creditors under alternative 2. A rural bank explained that creditors use hundreds and sometimes thousands of different settlement agents who use their own loan origination systems with no universal data interface, which would make shared responsibility difficult. A software company explained that, as a result of this lack of universality, software vendors likely would need to integrate different systems, which could be expensive and complicated by the lack of meaningful naming conventions and a lack of standardized data formats. The commenter recommended that the final rule take steps to minimize the need to integrate different systems.

Some settlement agent commenters believed that implementing the Closing Disclosure would be a significant expense, would force them to raise fees on consumers, and could decrease settlement agent productivity and put small practitioners out of business. To reduce costs, a number of settlement agent commenters recommended that the Bureau mandate a standard Closing Disclosure form, rather than model forms. Settlement agent commenters were concerned that use of model forms would require settlement agents to communicate with many disparate information technology systems, increasing burden.

One settlement agent commenter explained that the Closing Disclosure would impose coordination costs on settlement agents and creditors, regardless of how creditors and settlement agents divided responsibility. The commenter explained that, if creditors and settlement agents work in the same document, they would incur software integration costs; if the settlement agent provided information separately to the creditor, the creditor would incur costs in populating the Closing Disclosure; and, if the creditor assumes settlement agent duties, settlement agents would face costs in terms of lost business opportunities and creditors would face costs in terms of hiring and training settlement agents.

Finally, a member of Congress stated that alternative 2 would require increased coordination, explaining that, while creditors and settlement agents currently coordinate in the closing process, they would need to adjust their procedures for the new forms and timing requirements. This commenter explained, however, that it was unclear how creditors would choose to coordinate with settlement agents under the new liability framework. Further, the commenter stated that, although it was clear that the role of settlement agents could change significantly under alternative 1, it was unclear which alternative would be less burdensome because the Bureau had failed to analyze the impact of either alternative 1 or 2. The member of Congress stated that the Bureau did not estimate the potential cost of changes that might be incurred as a result of alternative 2, and that it was unclear how creditors would choose to coordinate with settlement agents.

Requests for clarification regarding alternative 2. A community bank criticized alternative 2 as vague and open-ended, which would create confusion for creditors that would ultimately be subject to regulatory supervision. A settlement agent commenter requested that the

Bureau clarify proposed § 1026.19(f)(1)(v), which would have stated that the settlement agent may provide a consumer with the disclosures required under § 1026.19(f)(1)(i), provided the settlement agent complies with all requirements of § 1026.19(f) as if it were the creditor. The commenter was concerned that this would impose a new duty on settlement agents to take responsibility for the financing of an individual's loan. The commenter recommended instead that the final rule provide for the delegation of duties between creditors and settlement agents.

A community bank and settlement agent commenters requested clarification on whether the settlement agent and creditor can complete their respective portions of the Closing Disclosure, combine their pages manually as one form or provide it separately from both parties to the consumer. Other commenters requested clarification on whether a creditor could prepare the Closing Disclosure provided three business days before consummation, with the settlement agent preparing any revised Closing Disclosures provided at consummation.

Other recommendations by commenters. Both creditors and settlement agents recommended alternatives that would require the Bureau to more specifically assign responsibilities with respect to the Closing Disclosure. Many settlement agent commenters did not necessarily express support for alternative 1 or 2, but instead generally advocated for their continued involvement in the settlement process, including the preparation of the Closing Disclosure. Trade associations representing settlement agents explained that, without further clarifying the settlement agent's role, settlement agents would face potentially large compliance costs because they would have to anticipate compliance with all aspects of the Closing Disclosure. One individual settlement agent suggested that the rule require title insurance underwriters to establish an effective process for managing the compliance risk of the settlement agents.

A wide variety of commenters representing creditors and various trade associations representing credit unions, banks, and community banks, settlement agents and the title insurance industry, as well as the manufactured housing industry recommended that the Bureau assign settlement agents substantive disclosure responsibilities so that creditors and settlement agents would prepare information over which they have respective control. A wide variety of settlement agent commenters requested that the Bureau impose similar requirements on creditors. For example, some commenters recommended dividing responsibility by the statutory authority requiring the disclosure, by page number (*e.g.*, creditors would prepare pages 1, 4, and 5, and settlement agents would prepare pages 2 and 3), or by the party that assumes responsibility for the Closing Disclosure. A rural bank explained that assigning specific disclosure responsibilities would reduce coordination costs because settlement agents and creditors currently use different software systems, which would make it difficult to exchange information.

A variety of commenters representing settlement agents, community banks, credit unions, title insurance companies, and trade associations representing settlement agents recommended that settlement agents be responsible for the Closing Disclosure. Community banks and credit unions expected this would alleviate concern about creditor liability for settlement agent conduct. Further, settlement agent commenters expected that this would ensure settlement agents remain involved in the settlement process and avoid a creditor conflict-of-interest. One commenter recommended that the consumer be able to choose whether the creditor or settlement agent prepare the Closing Disclosure. One settlement agent explained that requiring the settlement agent to prepare the Closing Disclosure but requiring the creditor to deliver the Closing Disclosure would be appropriate because in many cases the loan originator is the consumer's primary point of contact and could explain the final figures.

In addition to suggesting an option for assigning substantive disclosure obligations, commenters suggested options for assigning procedural duties or other standards, including liability, on creditors and settlement agents. Commenters requested that the final rule further define the responsibility of creditors and settlement agents to provide timely and accurate information. Large banks and trade associations representing creditors and attorneys suggested that, in light of creditor liability, settlement agents should be responsible for providing accurate information to creditors in a timely manner so creditors could prepare the Closing Disclosure.[234] One large bank commenter explained that settlement agents would not be able to accurately and timely prepare and provide the TILA portions of the Closing Disclosure. This bank and another large bank commenter explained that settlement agents play an important role in providing information about items such as, third-party lender payoff amounts, taxes, recording fees and other information currently within purview of settlement agents or real estate agents. One large bank commenter explained that the lender relies on the settlement agent to provide an accurate accounting of fees and charges listed on the closing sheet.

A settlement agent commenter, a compliance company, credit union trade associations, and a community bank commenter recommended that the final rule impose liability on whichever party is responsible for preparing the Closing Disclosure. One settlement agent commenter explained that settlement agents should prepare the Closing Disclosure, as they do today, but that the final rule should shift a portion of the burden for accuracy of the disclosure to settlement agents. The commenter explained that this would increase the likelihood that creditors would continue to rely on settlement agents because creditors would not carry all of the

[234] One commenter also recommended that settlement agents be responsible for exceeding the limitations on increases from the estimated charges disclosed on the Loan Estimate under § 1026.19(e)(3).

burden for the accuracy of the Closing Disclosure.

Similarly, settlement agent commenters recommended that the Bureau impose requirements on creditors to provide timely and accurate information to ensure settlement agents have sufficient time to prepare settlement costs on the Closing Disclosure. Settlement agent commenters and trade associations representing credit unions recommended that the settlement agent should prepare the Closing Disclosure and that the creditor should review and approve the form. Settlement agents explained that this would alleviate concerns about creditor conflicts-of-interest, while creditors pointed out that this would alleviate creditor liability for settlement agent actions. Trade associations representing banks and financial companies requested that the final rule address who will provide the Closing Disclosure before and at closing, recommending that the creditor should provide if before closing (unless the settlement agent agrees to provide it) and the settlement agent should provide revised closing disclosure at closing because the creditor is not always present at closing.

Creditor responsibility. A variety of creditors and trade associations representing creditors stated that they did not perceive a meaningful distinction between alternatives 1 and 2 because the creditor would remain liable under either option. Creditors expressed concern with this arrangement because provision of the Closing Disclosure depends on the cooperation of third parties, namely settlement agents. Large banks and a credit union explained that creditors do not control or have direct access to certain settlement charges and therefore could not guarantee that they will always be disclosed in a timely manner. A large bank explained that this is particularly the case with respect to information about amounts paid to and due from the seller. A large bank and a trade association representing banks observed that creditor responsibility for the accuracy of settlement costs would be a significant revision to existing practice.

Several commenters, including a non-depository lender, a settlement agent, and a trade association representing settlement agents and the title insurance industry believed that creditor responsibility for the Closing Disclosure would lead to dual closings (one for the real estate transaction and one for the mortgage transaction) resulting in a more complicated closing process at higher cost to the consumer. A law firm commenter and a title insurance agent anticipated that creditor-controlled closings would result in creditors choosing the cheapest closing attorney without regard to quality, increasing risk to the title insurance underwriter, thereby increasing title insurance premiums, which would be passed on to consumers.

A wide variety of commenters expressed concern that creditor responsibility for the Closing Disclosure would mean that creditors would take greater control over the settlement process or turn to larger, national settlement firms instead of independent settlement agents, which will limit consumer choice and the ability to shop, and which could have a negative impact on the availability of local settlement agents, particularly in rural areas. Other settlement agent commenters were concerned that reliance on national settlement agent companies would mean that settlements would lose the benefit of local settlement agent expertise. Some settlement agent commenters were concerned that creditor responsibility for providing the Closing Disclosure would encourage creditors to assume control over title insurance matters, become national title insurance companies, contract with title insurance companies directly, or impact real estate brokers' ability to freely refer clients to settlement agents.

Settlement agent and attorney commenters, including a national professional association representing attorneys, were concerned that creditor responsibility for the Closing Disclosure would result in risk-shifting between creditors and settlement agents, which they argued would not be in the consumer's interest. One settlement agent commenter anticipated that creditors would impose third-party vetting to "approve" settlement agents they work with, which would impose indirect costs on settlement agents. This commenter also anticipated that creditor responsibility for the Closing Disclosure would result in creditors requiring settlement agents to maintain additional liability insurance, which would come at a cost to settlement agents.

Other settlement agent commenters anticipated that creditor liability would result in creditors requiring any violation under RESPA or TILA to be borne by the settlement agent and that smaller settlement agents would not be able to bear this responsibility or be able to maintain the type of liability insurance that would be required by creditors. A law firm commenter predicted that the cost of title insurance premiums would increase to compensate for the lost revenue that would result from creditors preparing the Closing Disclosure. This commenter also indicated that diminishing the role of title agents would mean consumers would lose the protection of title insurance gap coverage that is provided by statute or required by the lender when a title agent closes the transaction, or that the consumer would no longer have the protection of the title insurance underwriter's closing protection letter. Many settlement agent commenters advocated for their continued involvement in preparing the Closing Disclosure, although a large number of settlement agents recommended that settlement agents be solely responsible for the Closing Disclosure, or that the Bureau further define a substantive division of responsibility.

By contrast, other commenters explained that creditor responsibility for the Closing Disclosure resembled current practice. Several agent commenters explained that creditors currently require settlement agents to obtain creditor approval for each RESPA settlement statement before a transaction closes or funds are disbursed. Commenters explained that, by approving the RESPA settlement statement and issuing preparation instructions to the settlement agent, the creditor already assumes some degree of responsibility for the contents of the RESPA settlement statement. Thus, as one commenter explained, the proposed rule would not, in practice, shift responsibility from the settlement agent company to the creditor and that it would be unnecessary for the rule to impose this responsibility on the creditor. A community bank commenter also noted that creditors already have responsibility for the accuracy of the RESPA settlement statement, but requested that settlement agents continue to be involved in preparing the Closing Disclosure in the purchase-and-sale context because of the additional requirements applicable to the seller. Two consumer advocacy group commenters explained that creditor liability under the rule would simplify enforcement of the rule and avoid confusion between creditors and other parties, and that creditors could protect themselves by negotiating indemnification agreements with and supervising settlement agents.

A trade association representing the settlement services industry and a community bank commenter explained that, if the final rule makes the creditor ultimately responsible for the Closing Disclosure, it should provide the creditor flexibility to determine how to prepare and provide the Closing Disclosure. Commenters explained that, depending on the market, the creditor's size and financial resources, some creditors may develop a variety of approaches to preparing and providing the Closing Disclosure, including relying, in some cases, on an in-house capability, and in other cases relying on approved unaffiliated third-parties or affiliated third-parties. One commenter observed that reliance on affiliates may be compromised by the points and fees threshold in the Bureau's ability-to-repay rulemaking.

One large bank commenter requested that the Bureau exclude from the creditor's responsibility fees outside of the creditor's control or imposed after the creditor issues closing instructions to the settlement agent. This commenter requested that the Bureau clarify that, in dividing responsibility with a settlement agent, the creditor may rely on the documents prepared by the settlement agent, and that if additional fees that are not imposed by the creditor or other items are not accurately disclosed on the statement, the creditor will not be liable for the accuracy of such fees or other items.

Large banks and many individual settlement agent commenters questioned the Bureau's legal authority to alter the existing division of responsibility or liability under TILA and RESPA by making the creditor responsible for the settlement agent's actions. A trade association representing banks and a large bank noted that RESPA section 4(b) requires settlement statements to be provided by "the person conducting the settlement" and that Regulation X requires settlement agents to complete the RESPA settlement statement. A large bank commenter questioned how assigning TILA liability to the creditor would carry out the purposes of RESPA section 4. The commenter was concerned that the Bureau would prescribe a division of responsibility in which the settlement agent could take part in completing or providing the Closing Disclosure but without any regulatory consequence. The commenter further requested that the Bureau retain the current and respective responsibilities of creditors and settlement agents with respect to the Closing Disclosure, in light of the absence of a requirement in the Dodd-Frank Act, TILA, or RESPA, that a creditor be responsible for the settlement agent's actions in completing or providing the Closing Disclosure.

State law issues. Various commenters, including attorneys, law firms, title insurance companies, settlement agents and trade associations representing attorneys, settlement agents and the title insurance industry expressed concern that requiring creditor preparation of the Closing Disclosure would conflict with State regulation of closings and the practice of law. Commenters identified several provisions of State laws that they stated give consumers an absolute right to choose their closing attorneys in residential real estate transactions. Commenters also identified provisions of certain State laws that they explained require attorneys or other agents to conduct closings. They explained creditor preparation of the Closing Disclosure could constitute the unauthorized practice of law, and that attorney or escrow agent involvement in such a transaction could constitute abetting the unauthorized practice of law. One commenter was concerned that creditors would prevent consumers from having access to an attorney at closings, contrary to State law. One settlement agent raised concerns that State law requires settlement agents to ensure a closing is conducted in compliance with State law and the rules under RESPA, and that creditor preparation of the Closing Disclosure would eliminate the settlement agent's ability to perform under State law.

Requests for clarification. Various individual settlement agents and a trade associations representing settlement agents and the title insurance industry requested that the Bureau clarify whether the Closing Disclosure is a disbursement statement. One trade association commenter explained that the Closing Disclosure should not serve as a disbursement statement, but that industry should make this determination on its own. A settlement agent commenter requested clarification on whose responsibility it would be to provide the Closing Disclosure to the consumer.

Final Rule

In general. The final rule adopts alternative 2 substantially as proposed. In light of the comments and ex parte submissions and RESPA's long-standing requirements regarding settlement agent preparation and delivery of the RESPA settlement statement, the Bureau believes that expressly allowing creditors to work with settlement agents will provide the most certainty in the market. Indeed, creditor commenters indicated that alternative 2 would make clear that they could continue to rely on settlement agents. Thus, the Bureau believes the final rule avoids creating uncertainty and avoids increased compliance costs and other risks to industry that could ultimately result in higher costs to consumers.

Alternative 2 provides clarity for creditors while also leaving sufficient flexibility for creditors and settlement agents to arrive at the most efficient means of preparation and delivery of the Closing Disclosure to consumers. Under the final rule, creditors and settlement agents are free to divide responsibility in a variety of ways, including but not limited to a division in which the creditor provides the Closing Disclosure three business days before consummation and the settlement agent provides any corrected Closing Disclosure at consummation, subject to the provisions of § 1026.19(f), as suggested as an alternative by some trade association commenters representing banks and financial companies.

The Bureau has considered suggestions from industry to impose additional substantive and procedural obligations on both creditors and settlement agents, including suggestions by some commenters for dividing responsibility for specific disclosures between settlement agents and creditors. After considering these comments, the Bureau continues to believe alternative 2 most effectively balances the interests of ensuring consumers receive a timely and accurate Closing Disclosure prepared in a consistent manner with the interests of industry in complying with the rule. The Bureau believes that a rule that expressly divided substantive disclosure responsibilities or assigned strict procedural duties governing the relationship between creditors and settlement agents would impose coordination costs on creditors and settlement agents that may result in inefficiencies during the closing process. The Bureau believes that the better approach for consumers is to permit shared responsibility and allow creditors and settlement agents to decide how to divide that responsibility most efficiently.

As part of the Small Business Review Panel process, the Bureau considered requiring the creditor to prepare certain loan cost information, and the settlement agent to prepare certain real estate settlement cost information. Under this approach, the creditor and settlement agent would be jointly responsible for combining the portions of the disclosure and providing the consumer with a Closing Disclosure three business days before closing. *See* Small Business Panel Review Report at 12. However, the Bureau determined after conducting the Small Business Review Panel, and continues to believe, that such a division would be impracticable. The Bureau received comments in response to the proposal suggesting a wide variety of approaches to creditor-settlement agent engagement, indicating that the industry does not employ a uniform method for disclosing information to consumers. In addition, there is significant overlap between the disclosures required by the two statutes, and creditors and settlement agents have access to both RESPA and TILA information.[235] Further, alternative 2 allows creditors and settlement agents to decide whether and how to coordinate, which would be complicated by a rule that assigned strict responsibilities to particular parties. For example, under the final rule, some creditors could conduct some closings in-house to avoid coordination costs in some cases. Alternative 2 provides flexibility by allowing creditors to manage preparation of the Closing Disclosure in a manner appropriate to their size, market, financial resources, and their own assessments of compliance risk and the applicability of other State law, Federal law, or other guidance, affecting their responsibility to supervise third-party service providers.[236]

[235] While some of the Closing Disclosure requirements in Regulation Z are modeled on existing provisions in Regulation X, the Closing Disclosure also includes new information that will likely require some degree of coordination. For example, the cash to close disclosure on pages 2 and 3 involves a calculation of loan costs, settlement service costs, and other costs. Accordingly, because this calculation requires analysis of several categories of costs, settlement agents and creditors may need to coordinate to arrive at a single cash to close figure.
[236] *See, e.g.*, U.S. Consumer Fin. Prot. Bureau, Bulletin 2012-03 (2012), available at http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

Moreover, a number of settlement agents and related trade associations explained that they did not wish to bear responsibility or costs associated with providing the Closing Disclosure. A number of settlement agent commenters operating in escrow jurisdictions expressed concern with a requirement that would impose TILA disclosure obligations on them and expressly requested that they not have any responsibility for providing disclosures under TILA. The final rule addresses the concerns expressed by many settlement agent commenters about substantial compliance costs that they would incur in exchanging information and in coordinating with creditors. The final rule allows settlement agents to avoid such costs by not taking responsibility for the Closing Disclosure. At the same time, creditors would still be free to rely on settlement agents' expertise in conducting closings. Thus, Alternative 2 provides settlement agents some flexibility with respect to determining the scope of their involvement in preparing and delivering the Closing Disclosure.

In addition, the Bureau believes the final rule will avoid concerns with conflicting State laws governing the conduct of settlement. Although the final rule requires only that the creditor provide certain disclosures to consumers and does not require that the creditor conduct settlements, the Bureau appreciates that creditor preparation of the Closing Disclosure may raise operational questions for creditors in certain States. To the extent a creditor is concerned with compliance with State or local laws, a creditor under alternative 2 may share responsibility with the settlement agent in whatever manner they determine is appropriate. In contrast, if the final rule were to assign more substantive or procedural responsibilities to creditors or settlement agents, the rule could raise difficult compliance questions with respect to the conduct of settlements in some jurisdictions.

Some settlement agent commenters questioned whether creditors should have any role in preparing or overseeing the preparation of the Closing Disclosure. These commenters believed creditors would have an improper conflict-of-interest in preparing the disclosure of settlement costs. The Bureau does not believe that requiring creditors to retain responsibility for the Closing Disclosure in the final rule will lead to consumer harm or abuse in other contexts because creditors will have sufficient incentive to comply with the final rule to ensure consumers receive a timely and accurate disclosure.

Some commenters expressed concern that settlement agents could face operational challenges if a creditor prepares the Closing Disclosure in a manner that conflicts with the creditor's closing instructions to the settlement agent. The Closing Disclosure is designed to integrate disclosures provided to consumers under TILA and RESPA to enhance their understanding of the home mortgage loan transaction. To the extent the Closing Disclosure's disclosure requirements differ from other arrangements made pursuant to contract or other law or custom, the final rule does not prohibit creditors and settlement agents from developing their own disbursement instructions and managing any discrepancies as they arise, consistent with the current practice with respect to the RESPA settlement statement. To the extent settlement agents have questions about how to explain the Closing Disclosure to consumers, the Bureau believes they will be able to coordinate with the creditor ahead of time as a result of the general three-business-day requirement in § 1026.19(f)(1)(ii)(A). As noted in the section-by-section analysis of that section, the Bureau believes a general three-business-day requirement will improve coordination between settlement agents and creditors by providing all parties additional time to ask questions and correct errors.

Concerns with creditor responsibility under alternative 2. Commenters expressed concern that creditor responsibility for the Closing Disclosure would make creditors more likely to assume greater control over the settlement process, which would result in closing delays because creditors would have to approve any last-minute changes that arise at the closing table. Creditor commenters also questioned the Bureau's authority to require creditors to disclose settlement cost information, particularly in light of RESPA section 4. The Bureau appreciates industry's concerns that creditor responsibility for the Closing Disclosure may affect the current roles of creditors and settlement agents. However, to integrate the disclosure requirements under TILA and RESPA, the Bureau believes the final rule should make creditors responsible for the accuracy and delivery of the Closing Disclosure under § 1026.19(f).

As discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), Dodd-Frank Act section 1419 amended TILA to require that creditors disclose aggregate settlement cost information under the early and final TILA disclosures required by TILA section 128. *See* 15 U.S.C. 1638(a)(17). As a result, creditors have responsibility for disclosing settlement cost information that had previously been solely the responsibility of settlement agents under RESPA. In light of this responsibility, the Bureau believes alternative 2 is appropriate because it permits creditors flexibility in how they rely on settlement agents to disclose settlement cost information. In addition, the Bureau believes creditors are in a better position than settlement agents to provide other TILA disclosures, such as the finance charge and projected payments disclosures. Further, making a single party ultimately responsible for the Closing Disclosure will reduce the likelihood of inconsistencies and errors in disclosures that require coordination, such as the cash to close disclosure.

The Bureau also believes that modifications to the proposal made in the final rule will reduce the rule's impact on the existing roles of creditors and settlement agents. The final rule clarifies that, with respect to the Closing Disclosure provided three business days before consummation, creditors may provide disclosures based on the best information reasonably available and may rely on information provided by settlement agents. *See* the section-by-section analysis of § 1026.19(f)(1)(i) above. In addition, under § 1026.19(f)(1)(v), settlement agents may provide consumers with the Closing Disclosure, provided they comply with all relevant requirements of § 1026.19(f), as discussed further below.

Further, the final rule reduces the risk that changes to the Closing Disclosure will result in closing delays, as discussed in the section-by-section analyses of § 1026.19(f)(1)(i), (f)(1)(ii)(A), and (f)(2). For example, the narrowed redisclosure waiting period triggers in § 1026.19(f)(2) should facilitate a settlement agent's participation in the transaction. Because additional three-business-day periods will be triggered only by changes to APR, loan product, and the addition of a prepayment penalty, other changes to settlement costs will not trigger a new waiting period. *See* the section-by-section analysis of § 1026.19(f)(2)(i) and (ii) above. The final rule also accounts for changes during the settlement process that may occur after consummation, as discussed in the section-by-section analysis of § 1026.19(f)(2)(iii). The Bureau believes these modifications will reduce compliance risk for creditors as they relate to the disclosure of settlement costs, which the Bureau believes will reduce the likelihood of disrupting the current roles of creditors and settlement agents.

The Bureau acknowledges that, despite these modifications to the final rule, creditors may assume greater responsibility for the disclosure of settlement cost information than they do currently. However, while creditors may seek to assume greater control over the disclosure of settlement costs or apply greater scrutiny to settlement services than under current rules, the Bureau believes creditors will continue to rely on the expertise of settlement agents in conducting closings. Creditor comments indicate that creditors and settlement agents have longstanding, deep relationships in which settlement agents act as creditors' partners in the closing and settlement process. As noted by many commenters, creditor responsibility under alternative 2 aligns with current practices and allow the parties to continue to work together to close home mortgage transactions in a manner that is most efficient for consumers and the market. With respect to commenters who were concerned that creditor responsibility for the Closing Disclosure would lead creditors to assume an improper role with respect to the underwriting of title insurance policies, the Bureau believes title insurance underwriters and creditors share an incentive to minimize risk to the underwriting of their own title insurance. Thus, the Bureau expects that creditors will have strong incentives to continue to rely on settlement agents under alternative 2. Furthermore, the Bureau expects that the requirements adopted in the 2013 ATR Final Rule and the May 2013 ATR Final Rule may have an impact on a creditor's decision to rely on exclusive affiliate relationships because those rules limit the points and fees that may be charged for a qualified mortgage, which are defined to include affiliate charges. *See* § 1026.32(b)(1)(i)(D) and (b)(1)(iii).

With respect to commenters' concerns that creditor responsibility for the Closing Disclosure would lead to dual closings, the final rule does not require that closings be conducted in any particular manner, other than to require the delivery and inspection of the Closing Disclosure in accordance with the requirements of § 1026.19(f). The Bureau expects industry will adapt current practices in a variety of ways, consistent with other applicable law or custom, to ensure consumers receive the required disclosures. With respect to concerns about closing delays caused by creditor-settlement agent coordination, the Bureau does not expect such delays will occur frequently because creditors and settlement agents already must coordinate to prepare the RESPA settlement statement. As noted by commenters, creditors and settlement agents work closely to conduct closings under current rules and the Bureau expects that this coordination will continue under the final rule.

One commenter suggested that the rule would require title insurance underwriters to establish an effective process for managing the compliance risk of settlement agents. The final rule does not impose requirements on title insurance underwriters to establish processes to manage the compliance risks of settlement agents as requested by commenters. Such requirements are outside of the scope of this rulemaking and are managed by most States through licensing regulations.

Some commenters expressed concern that proposed § 1026.19(f)(1)(v) would mean settlement agents would have to assume all the duties of the creditor. The Bureau does not intend through this final rule to impose duties outside the scope of § 1026.19(f) on settlement agents. A settlement agent's compliance with duties under § 1026.19(f) depends on the extent of settlement agent involvement in preparing and providing the Closing Disclosure. Proposed comment 19(f)(1)(v)-1 would have explained that, by assuming responsibility to provide the disclosures required under § 1026.19(f)(1)(i), the settlement agent becomes responsible for complying with all of the relevant requirements of § 1026.19(f). As discussed below, the final rule adopts this comment substantially as proposed. To further clarify the scope of a settlement agent's responsibility under the rule, and to conform to similar language in § 1026.19(e) with respect to mortgage brokers, final § 1026.19(f)(1)(v) states that a settlement agent may provide a consumer with the Closing Disclosure, provided the settlement agent complies with "all relevant" requirements of § 1026.19(f). In addition, the final rule omits the language "as if it were the creditor" to avoid any suggestion that settlement agents, by providing the Closing Disclosure, would assume duties outside the scope of § 1026.19(f).

The Bureau believes settlement agents' compliance with the relevant provisions of § 1026.19(f) is critical to ensuring consumers consistently receive a Closing Disclosure that complies with the final rule, regardless of how settlement agents and creditors divide responsibility. In addition, because creditors are responsible under § 1026.19(f)(1)(v) for ensuring compliance with § 1026.19(f), the Bureau believes creditors would be reluctant to share responsibility with settlement agents if it were unclear whether settlement agents had to comply with § 1026.19(f). Section 1026.19(f)(1)(v) makes clear that a settlement agent must comply with § 1026.19(f) to the extent it assumes the responsibility to provide the disclosures required by that provision.

Some commenters stated that the rule's lack of specificity about the roles of settlement agents and creditors would result in confusion over the responsibilities of the respective parties. As discussed above, however, the final rule does not further specify which parts of the Closing Disclosure a settlement agent is required to complete or, if more than one Closing Disclosure is provided under § 1026.19(f), which Closing Disclosure the settlement agent is required to deliver. Final § 1026.19(f)(1)(v) is intended to provide maximum flexibility between creditors and settlement agents so that they may determine how to provide the Closing Disclosure most efficiently and effectively in the contexts of their businesses. As discussed below, the proposed comment 19(f)(1)(v)-2 has been revised to clarify the meaning of § 1026.19(f)(1)(v) with respect to a settlement agent's ability to divide responsibility with the creditor for providing different versions of the Closing Disclosure under § 1026.19(f).

Commenters also expressed concern about creditor responsibility for the Closing Disclosure, notwithstanding the settlement agent's involvement. As they would have been under proposed § 1026.19(f)(1)(v), creditors under final § 1026.19(f)(1)(v) are responsible for ensuring compliance with § 1026.19(f), even where a settlement agent provides the disclosures. The Bureau believes making a single party ultimately responsible for the Closing Disclosure will provide industry an incentive to ensure the Closing Disclosure is provided in a consistent manner. Creditor responsibility also may provide an incentive to improve creditor and settlement agent communication, as noted by some settlement agent commenters. The Bureau does not believe it is necessary to mandate in the final rule how a settlement agent and creditor must coordinate to ensure settlement agent compliance because settlement agents are already required to comply with § 1026.19(f)(1)(i), pursuant to § 1026.19(f)(1)(v).

Some commenters recommended that the final rule set forth objectives-based criteria for creditors and settlement agents to provide timely and accurate information. The Bureau does not believe it is necessary to do so. In general, the Bureau believes final § 1026.19(f)(1)(v) sets forth a clear standard for settlement agents to comply with § 1026.19(f) to the extent they provide disclosures under that section. In addition, the Bureau also believes that creditors will be able to manage compliance risk through agreements and arrangements with settlement agents and title insurance underwriters. In addition, the Bureau believes the clarification made in comment 19(f)(1)(i)-2, as discussed in the section-by-section analysis of § 1026.19(f)(1)(i), addresses concerns about relying on third-party information for the Closing Disclosure provided three business days before consummation.

The final rule does not include a requirement that the settlement agent provide information to the creditor in a timely manner. To provide industry maximum flexibility in preparing and providing the Closing Disclosure, the final rule does not mandate that settlement agents and creditors coordinate in any particular manner. In light of the variety of ways creditors and settlement agents may divide responsibilities and the diversity of settlement practices across the country, the Bureau does not believe it is feasible to define with specificity a timeliness standard for all creditors and settlement agents. Mandating specific timeframes for sharing information could be unnecessarily cumbersome for industry. Accordingly, the final rule does not require that settlement agents share information with creditors by any particular deadline. Nor does the final rule impose a general requirement for settlement agents to provide "timely" information. Without further defining such a requirement, the Bureau is concerned that such a standard would be vague. The Bureau expects settlement agents will have a business interest in coordinating with creditors to ensure they provide information in a timely manner.

Some commenters requested clarification on whether creditors and settlement agents may complete portions of the Closing Disclosure and combine their portions into one form manually provided to the consumer, or if they may separately provide their respectively completed portions to the consumer. Creditors and settlement agents may agree on a division of responsibility to complete portions of the Closing Disclosure, but they must coordinate to ensure the consumer receives a single disclosure. See the discussion of comment 19(f)(1)(v)-4 below. With respect to comments regarding the use of standard and model forms, see the section-by-section analysis of § 1026.38(t)(3) below.

Final provisions. For the reasons discussed above, the Bureau adopts the language in proposed § 1026.19(f)(1)(v) substantially as proposed. As discussed above, final § 1026.19(f)(1)(v) states that the settlement agent may provide a consumer with the disclosures required under § 1026.19(f)(1)(i), provided the settlement agent complies with "all relevant" requirements of § 1026.19(f). In addition, as discussed above, the final rule omits the language "as if it were the creditor."

Final § 1026.19(f)(1)(v) includes a modification with respect to the requirement that the creditor ensure that the disclosures required under § 1026.19(f)(1)(i) are provided in accordance with all requirements of § 1026.19(f). For clarity, and to conform to similar language in § 1026.19(e)(1)(ii) with respect to mortgage brokers who provide the Loan Estimate, the final provision states that the creditor must ensure that "such" disclosures are provided in accordance with "all" requirements of § 1026.19(f). For the same reasons, final § 1026.19(f)(1)(v) provides that disclosures provided by a settlement agent in accordance with the requirements of § 1026.19(f) satisfy the creditor's obligation under the general paragraph 19(f), instead of the more specific paragraph 19(f)(1)(i).

The Bureau adopts proposed comment 19(f)(1)(v)-1 substantially as proposed. To facilitate compliance with § 1026.19(f), the comment explains that, for purposes of § 1026.19(f), a settlement agent is the person conducting the settlement. This language is substantially similar to language in RESPA section 4(b), which requires "the person conducting the settlement" to provide the RESPA settlement statement. The comment does not include the language "as if it were the creditor," to conform to the final rule. Comment 19(f)(1)(v)-1 also revises proposed language that would have addressed how § 1026.19(f)(1)(v) applies where requirements of § 1026.19(e) are referenced in § 1026.19(f). The proposed language would have referred to text in proposed comment 19(f)(1)(ii)-3 for an example involving timeshare transactions and provision of the Loan Estimate under § 1026.19(e), in which "settlement agent" could not be read in place of "creditor." As discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(B) above, comment 19(f)(1)(ii)-3 has been revised with respect to the provision of the Loan Estimate for timeshare transactions. Accordingly, conforming changes have been made to comment 19(f)(1)(v)-1. Finally, comment 19(f)(1)(v)-1 also includes minor technical revisions for clarity.

The Bureau adopts proposed comment 19(f)(1)(v)-2 with modifications and additional discussion to clarify the variety of ways in which creditors and settlement agents may agree to divide responsibility with respect to providing the disclosures pursuant to § 1026.19(f)(1)(v). The comment uses the term "provides" to better reflect the language in the rule text, instead of the term "issues" that was used in proposed comment 19(f)(1)(v)-2. Comment 19(f)(1)(v)-2 also clarifies that if the settlement agent provides any disclosures under § 1026.19(f), the settlement agent must comply with the "relevant" requirements of § 1026.19(f). The comment also provides an illustrative example of how creditors and settlement agents could divide responsibility and includes a cross-reference to comment 19(f)(1)(v)-3 to indicate that a creditor remains responsible under § 1026.19(f) for ensuring that the requirements of § 1026.19(f) have been satisfied.

Like the proposed comment, comment 19(f)(1)(v)-2 explains that the settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f). However, comment 19(f)(1)(v)-2 does not include the example in proposed comment 19(f)(1)(v)-2 that would have illustrated how a settlement agent and a creditor could divide responsibility with respect to completing the Closing Disclosure. Instead, comment 19(f)(1)(v)-2 includes a cross-reference to comment 19(f)(1)(v)-4 to refer to additional guidance on how creditors and settlement agents may divide responsibilities for completing the disclosures.

The Bureau adopts proposed comment 19(f)(1)(v)-3 substantially as proposed. The comment includes additional language to clarify the example in which the creditor does not comply with § 1026.19(f). The example in comment 19(f)(1)(v)-3 explains that if the settlement agent assumes the responsibility for providing all of the disclosures required under § 1026.19(f)(1)(i), the creditor does not comply with § 1026.19(f) if the settlement agent does not provide these disclosures at all, or if the consumer receives the disclosures later than three business days before consummation, as required by § 1026.19(f)(1)(ii) and, as applicable, (f)(2)(ii). The final rule adopts proposed comment 19(f)(1)(v)-4 with modifications to include additional language clarifying that creditors and settlement agents may divide responsibility to complete the Closing Disclosure under § 1026.38.

Final § 1026.19(f)(1)(v) and its associated commentary are adopted pursuant to the Bureau's authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1405(b). Final § 1026.19(f)(1)(v) and its associated commentary will achieve the purposes of RESPA by resulting in more effective advance disclosure of settlement costs, consistent with section 19(a) of RESPA, and by promoting the informed use of credit, consistent with section 105(a) of TILA. The final rule and commentary also will improve consumer understanding and awareness of the transaction by permitting the form to be completed and provided by settlement agents, who often assist consumers during a real estate closing, which is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

The final rule and commentary are consistent with Dodd-Frank Act section 1032(a) because the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner that permits consumers to understand the costs, benefits, and risks associated consumers will understand the costs and risks associated with the mortgage loan and settlement services if settlement agents are permitted to provide the disclosures required under § 1026.19(f)(1)(i).

The Bureau understands that some commenters were concerned that settlement agents would face civil liability under section 130 of TILA if the Bureau adopted proposed alternative

2. However, the Bureau does not believe that a settlement agent's providing the Closing Disclosure, or some aspect thereof, under § 1026.19(f)(1)(v) exposes the settlement agent to civil liability under section 130 of TILA, to the extent that the settlement agent is not also functioning as a creditor or an assignee under TILA sections 130 and 131.

19(f)(2) Subsequent Changes

As discussed above, the proposal would have included a strict requirement that the disclosures provided three business days before consummation contain the "actual terms" of the transaction. Thus, because the "actual terms" would have had to be disclosed three business days before consummation pursuant to § 1026.19(f)(1)(ii), revisions to the Closing Disclosure generally would have triggered a new three-business-day pre-consummation waiting period. However, the Bureau recognized that, in certain circumstances, a strict application of the three-business-day waiting period required by proposed § 1026.19(f)(1)(ii) would operate to the consumer's detriment. Accordingly, proposed § 1026.19(f)(2) would have provided that if the Closing Disclosure provided pursuant to proposed § 1026.19(f)(1)(i) is subsequently revised for any of the reasons described in § 1026.19(f)(2), a creditor need not comply with the timing requirements in § 1026.19(f)(1)(ii) when providing a revised disclosure.

In general, under § 1026.19(f)(2)(i) and (f)(2)(ii) respectively, if changes occurred due to consumer and seller negotiations, or if the amount actually paid by the consumer did not exceed the amount disclosed pursuant to § 1026.38(d)(1) by more than $100, the creditor would have been required to provide a revised Closing Disclosure reflecting such changes at or before consummation, instead of triggering a new three-business-day pre-consummation waiting period. Proposed § 1026.19(f)(2)(iii) through (v) would have permitted revised disclosures to be provided within 30 days after consummation and, in some cases, as soon as reasonably practicable, where a revised Closing Disclosure was provided due to inaccuracies resulting solely from payments to a government entity, to correct non-numeric clerical errors, and to document cures for violations of the good faith estimate requirements, respectively.

As discussed in greater detail in the section-by-section analyses of § 1026.19(f)(2)(i) and (ii) below, the final rule narrows the circumstances in which revisions to the "actual terms" of the Closing Disclosure provided three business days before consummation under § 1026.19(f)(1)(ii)(A) trigger a new three-business-day pre-consummation waiting period. In general, pursuant to final § 1026.19(f)(2)(i) and (ii), a revised Closing Disclosure must be provided three business days before consummation when the loan's previously disclosed APR becomes inaccurate, the loan product changes, or a prepayment penalty is added; other revisions may be disclosed at or before consummation. Final § 1026.19(f)(2)(iii) through (v) set forth circumstances under which revised disclosures must be provided after consummation. However, because the triggers for providing a revised Closing Disclosure three business days before consummation have been narrowed pursuant to § 1026.19(f)(2)(ii), final § 1026.19(f)(2)(iii) through (v) no longer function as exceptions to the strict three-business-day requirement under proposed § 1026.19(f)(1)(ii). Nevertheless, the Bureau believes retaining them, with modifications discussed below, will enhance consumer awareness and understanding of their mortgage transaction and facilitate industry compliance.

19(f)(2)(i) and (ii) Changes Before Consummation

Proposed 19(f)(2)(i). Proposed § 1026.19(f)(2)(i), would have provided that if the consumer and the seller agree to make changes to the transaction that affect items previously disclosed, the creditor shall deliver revised disclosures reflecting such changes at or before consummation. Under proposed § 1026.19(f)(2)(i), these changes could be reflected on a revised

Closing Disclosure without triggering a new three-business-day waiting period. Proposed comment 19(f)(2)(i)-1 would have provided illustrative examples of this requirement. The proposal reflected the common practice in which sellers and buyers alter the terms of the real estate transaction based on the condition of the house at the time of the walk-though inspection, which is often the day before the scheduled real estate closing, and in some cases even continue to negotiate the deal at the closing table.

Proposed 19(f)(2)(ii). Proposed § 1026.19(f)(2)(ii) would have provided that if the amount actually paid by the consumer does not exceed the amount disclosed under § 1026.38(d)(1) by more than $100, the creditor shall deliver revised disclosures at or before consummation. The Bureau sought comment on whether $100 was the appropriate threshold to accommodate small miscalculations or minor changes prior to consummation. The Bureau proposed this exemption because it did not believe that small miscalculations or minor changes to the transaction should result in closing delays. The Bureau stated its belief that $100 may have been the correct tolerance based on feedback regarding the items most likely to change prior to consummation.

Proposed comment 19(f)(2)(ii)-1 would have discussed the requirements of § 1026.19(f)(2)(ii), which would have stated that the creditor may provide revised disclosures without regard to the timing requirements in § 1026.19(f)(1)(ii) if the amount actually paid by the consumer does not exceed the amount disclosed pursuant to § 1026.38(d)(1) by more than $100, provided that the creditor delivers revised disclosures at or before consummation. This proposed comment also would have included illustrative examples of these requirements.

Proposed comment 19(f)(2)(ii)-2 would have clarified that revised disclosures provided at consummation may reflect adjustments pursuant to both § 1026.19(f)(2)(i) and

§ 1026.19(f)(2)(ii). Thus, although proposed § 1026.19(f)(2)(ii) would have limited the difference between the amount disclosed pursuant to § 1026.19(f)(1)(i) and the amount actually paid at the real estate closing by the consumer to $100, the amount actually paid by the consumer at the real estate closing could vary by more than $100, to the extent permitted by proposed § 1026.19(f)(2)(i). This proposed comment also included illustrative examples of this provision.

Comments

The Bureau received extensive comment and ex parte submissions on the proposed redisclosure requirements and exemptions from a broad group of stakeholders, including consumer advocacy groups, commenters representing a variety of industry sectors, government agencies, and members of Congress. While most consumer advocacy groups did not comment specifically on this aspect of the proposal, two such groups submitting a joint comment supported the proposal's requirement to redisclose the Closing Disclosure at least three business days before consummation for any changes to the actual terms of the transaction, subject to the bona fide personal financial emergency waiver and the Bureau's proposed narrow exemptions. These commenters emphasized that any exemptions to the timing requirements should be narrow. An individual settlement agent commenter also expressed support for the redisclosure waiting period and the proposed exemptions.

A State attorney general commenter supported the redisclosure waiting period and the proposed exemptions and noted that the magnitude and cost of a consumer's decision to purchase a home make it particularly important that consumers be made aware of all associated costs far enough in advance of closing to be able to reasonably evaluate the transaction with all costs in mind. Several associations of State financial regulators submitted a joint letter in which they offered measured support for the proposed redisclosure waiting period. While these commenters noted that they generally supported an advance disclosure requirement, they stated that the Bureau should take a balanced and careful approach to the implementation of the proposed timing and redisclosure requirements. The letter stated that thresholds should not cause significant market disruptions and should be amended if they do. Thus, these commenters requested that the Bureau seek ways to avoid restricting access to credit or unnecessarily delaying closings. These commenters also emphasized that the expanded tolerances proposed by the Bureau would ensure that consumers are not subject to the types of abusive practices that they were in the past and would provide an incentive for lenders to provide consumers with accurate Loan Estimates and Closing Disclosures, reduce the risk of error and uncertainty associated with the disclosure process, and lead to a healthier residential mortgage market.

By contrast, an overwhelming majority of industry commenters, including a GSE, and a State housing development authority, along with members of Congress, expressed significant concern with the proposed redisclosure waiting period for changes to the actual terms of the transaction and the narrowness of the proposed exemptions. The SBA and members of Congress also expressed significant concern with the proposed redisclosure waiting period and the narrowness of the proposed exemptions.[237] Similar to concerns about the general three-business-day receipt requirement, commenters explained that providing “final” settlement costs three business days before consummation was impracticable, unnecessary, and would result in frequent closing delays that would impose substantial costs on consumers, sellers, industry, and the market. The majority of these commenters were concerned that the narrow exemption and waiver provisions would not reduce the likelihood of closing delays due to redisclosure.

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[237] The Bureau received one letter submitted by a member of Congress during the comment period and two ex parte letters dated May 24, 2013, signed by 62 Republican members and 20 Democratic members of Congress, respectively. The letters expressed serious concern with the proposal’s redisclosure requirements.

Difficulties associated with a redisclosure waiting period. Commenters cited in connection with a three-business-day redisclosure period the same concerns they cited about the impracticality of providing final settlement costs three business days before consummation, described in the section-by-section analysis of § 1026.19(f)(1)(ii) above. Commenters identified a variety of reasons why transaction costs can change during the three-business-day period before consummation, which commenters believed would frequently trigger a new three-business-day period.

Many commenters highlighted consumer requests as a major source of changes to the loan or settlement costs. Commenters explained that consumers frequently request changes to the loan amount, either because the amount needed to pay off a refinanced loan changes or, in the purchase context, because the consumer's financing needs change independent of a negotiation with a seller. For example, commenters explained that consumers may discover they need a larger or smaller down-payment before consummation. Commenters also explained that consumers may make changes affecting their escrow charges or purchase products or services in connection with the transactions, such as insurance endorsements, mobile notary services, document-preparation services, inspections, and legal services. Commenters maintained that it would be important for consumers to retain flexibility to make changes to their transactions.

Commenters identified third party changes not requested by the consumer that could affect the transaction, despite reasonable due diligence of creditors and settlement agents. Commenters explained that it is not uncommon for third parties to correct errors or account for changed circumstances outside of the control of creditors or settlement agents. For example, a variety of commenters noted that homeowners' associations may be late in reporting assessments or fees associated with a certificate of approval. Another common example was that of third-party lenders who may be late in providing payoff statements or subordination agreements. Commenters also cited weather- or travel-related delays as reasons why certain costs may not be known until consummation. Commenters also identified changes that only affected the seller's side of the transaction as a common source of changes that might occur before consummation, such as increases in the seller's payoff amounts or additional interest due on taxes. Commenters did not believe changes to the seller's side of the transaction should require a new three-business-day waiting period. Commenters also explained that agents conducting a title exam may discover new encumbrances or other obligations, such as final utility charges, judgments, unpaid taxes, or, in rural areas, grazing leases, wells, or easements, during a "final rundown" the day before consummation that is often done as a matter of prudent due diligence.

In addition, commenters explained that a series of redisclosure waiting periods could be triggered if per diem or prorated amounts accumulate, such as prepaid interest or escrowed charges. A number of commenters, including a GSE, expressed concern that the accumulation of such charges could trigger a series of redisclosure periods if the de minimis exemption under proposed § 1026.19(f)(2)(ii) were too low. Commenters also explained that a number of settlement costs are interrelated, such as service provider commissions, and that a change in one item could easily change another.

Many industry commenters believed that the proposed exemptions were too narrow to prevent frequent closing delays. Members of Congress settlement agent commenters submitted ex parte letters expressing concern that the rule would put consumers in the position of having to choose between having their closing delayed for three days (and paying the associated increased costs) or not buying a product for their protection (such as a home warranty or an owner's title insurance policy). Commenters supported the consumer-seller negotiation exemption, but believed the proposed $100 de minimis exemption was too low to effectively prevent unnecessary delays. A trade association representing creditors and a member of Congress stated that the Bureau provided little rationale for selecting a $100 de minimis exemption, suggesting that it appeared arbitrary. Commenters explained that $100 was inadequate because it was not proportional to the transaction, did not account for inflation, or the variety of factors that can cause settlement costs to change within three to six business days before consummation and that are out of the creditor's or the settlement agent's control. Commenters explained that the following costs could easily exceed $100: fees charged for optional third-party services purchased by the consumer, such as a consumer's decision to hire an outside notary, a courier, or an attorney; consumer-requested changes to the loan amount, escrowed amounts, insurance policies or endorsements, premium-deductible tradeoffs, and home warranties; accumulating prepaid interest due to closing delays; or additional interest due on a consumer's payoff of an existing loan.

Costs associated with a redisclosure waiting period. A significant proportion of commenters stated that a mandatory three-business-day redisclosure waiting period would impose high costs on consumers, sellers, industry, and the real estate market generally. Commenters identified the same costs described in the section-by-section analysis of § 1026.19(f)(1)(ii) above, arguing that delayed closings would jeopardize a consumer's real estate agreements, result in financial costs and inconvenience to consumers and sellers, restrict a consumer's ability to shop, and prolong interest payments on outstanding debts. Commenters were concerned that delays caused by the redisclosure waiting period could cause certain loan and settlement costs to increase, which could trigger additional redisclosure waiting periods. Commenters also explained that uncertainty over when closings occur would make it difficult for consumers, sellers, settlement agents, and creditors to coordinate to reschedule closings. Some commenters were concerned that it would be difficult for parties to reschedule a closing date and that sellers may be unlikely to extend a purchase contract to accommodate a closing delay. In addition, a trade association representing banks explained that consumers would face liquidity problems if settlement agents placed consumer funds in non-interest-bearing accounts. A large bank and a trade association representing settlement agents explained that consumers in refinancings would have difficulty meeting upcoming expenses or would forego savings for each three-business-day period during which they would have to make payments on an existing loan. A settlement agent commenter and professional association representing attorneys were concerned that multiple consumer-seller walk-through inspections would be required during each redisclosure waiting period.

Commenters including settlement agents, creditors, and various trade associations also explained that the proposed rule could put consumers in a difficult position of deciding whether to make changes to their transaction (*e.g.*, to purchase an insurance policy or make changes to escrowed items) or delay closings. The ex parte letters from members of Congress also expressed concern with such a scenario.

Creditors were concerned that their underwriting costs would increase as a result of expired credit or employment verifications or expired interest rate locks, particularly if the Bureau finalizes tolerance rules that limit their ability to increase fees. Some creditors explained that they would likely price rate locks higher to cover this risk or that they may qualify the availability of guaranteed rates. Creditors also were concerned that uncertainty over the date of closing would require them to pay more for warehouse financing capacity. A settlement agent observed that settlement service providers may be inhibited from recouping the actual costs of their services if creditors or settlement agents did not revise the Closing Disclosure out of concern for triggering a redisclosure waiting period. A law firm commenter explained that without flexibility in the rule to account for changes in these charges, settlement service providers may delay consummation to ensure they are compensated for their services.

Many industry commenters, including a GSE, expressed concern about the aggregate impact of the proposed three-business-day redisclosure rule on the efficiency of the market. Commenters expressed serious concern about the unintended consequences of delayed closings on sellers who have scheduled their own purchase transaction to occur immediately after a consumer's purchase transaction (coinciding settlements) or who are under pressure to conduct a short sale of their property (for less than the outstanding principal balance of their loan). Commenters frequently cited an anticipated "domino effect" of delayed closings across the market, which could result in unexpected additional costs and delay other transactions. In general, commenters were concerned that delayed closings would result in fewer closings and increased cost and burden that would be passed on to consumers. A trade association representing settlement agents and the title insurance industry submitted a commissioned study analyzing the aggregate impact of the proposed redisclosure waiting period, highlighting financial costs to sellers and consumers, as well as to State and local governments.[238] The study assumed that a little over half of total closings would experience at least one three-business-day

[238] The study stated that, "[b]ased on incidents in past years, industry professionals expect that between 50 percent and 60 percent of total closing transactions would experience at least one three-day delay of closing due to changes in the Closing Disclosure forms." Nam D. Pham, Ph.D., NDP Consulting, *The Economic Contributions of the Land Title Industry to the U.S. Economy* (November 2012), p. 2. The study concluded that delaying the collection of transfer taxes and fees would result in a "lost time value" for State and local governments, with a cumulative impact of more than $1 million for every three-day period. Further, the study concluded that just one three-day delay would have an impact of nearly $193 million on sellers (in terms of time value and mortgage interest payments), an impact of nearly $64 million on homeowners who refinance (in terms of mortgage interest payments for each one percentage point mortgage rate reduction), and, for home buyers, an impact of more than $1 billion per year in additional mortgage interest payments throughout the life of their mortgage loans. *See id.*

delay of closing due to changes in the Closing Disclosure.

Alternatives recommended by commenters. Industry commenters recommended a variety of approaches to modify the Bureau's proposed timing requirements, including requiring no waiting periods, shortening the three-business-day period to a one- or two-day period, requiring a three-business-day period for TILA-mandated costs, or requiring no waiting periods for settlement-related costs. Other commenters recommended adding flexibility to the consumer waiver or increasing the $100 de minimis exemption. Other commenters recommended additional exemptions for types of loans (*e.g.*, refinancings), types of closing costs, or other exemptions based on changes requested by or benefiting the consumer.

A community bank, a trade association representing various mortgage professionals, and an individual consumer recommended that the final rule require a separate form to be provided to consumers documenting what changed from the initial Closing Disclosure. Trade associations representing various mortgage professionals and settlement agents, a community bank, and a non-depository lender recommended that the final rule impose waiting periods shorter than three business days, such as a one-business-day waiting period.

Many commenters, including trade associations representing settlement agents, banks, and real estate agents, title insurance companies, settlement agents, non-depository lenders, and attorneys, were concerned that the proposed exemptions would not cover all potential last-minute changes that presented relatively little consumer risk. Commenters requested that the Bureau clarify existing exemptions to prevent creditors and settlement agents from interpreting them narrowly to the detriment of consumers. Other commenters requested that the Bureau expand the scope of the proposed exemptions.

Many commenters offered recommendations for changes they did not believe warranted a new waiting period. One trade association representing banks and financial companies explained that while a change to the fundamental terms of the loan may warrant a new waiting period, minor changes should not. Commenters also stated that changes requested by, agreeable to, or that otherwise benefit consumers should not require a new waiting period so that consumers could maximize their flexibility before consummation. Other categories suggested by creditor commenters included adjustments to the loan amount (*e.g.*, due to investor or loan program limits or to account for payoffs of other loans), or changes that are due to circumstances outside of the creditor's control.

Commenters also recommended that changes to particular closing costs should not require a new three-business-day period. Trade associations representing banks, a large bank, and a non-depository lender stated that amounts collected at closing that change depending on when closing is scheduled to occur should be exempted from a redisclosure waiting period. Settlement agents, including one submitting an ex parte submission, and trade associations representing settlement agents and the title insurance industry offered a number of other examples: closing costs unrelated to loan costs paid by or on behalf of the consumer; payments to discharge any defects, liens, encumbrances or other matters requiring curative action discovered during a title search or examination; any prorated or per diem amount where the underlying rate does not change; insurance fees; home warranties; lender reserves for taxes and insurance and amounts paid to a State or local government; recording costs and other fees incurred for the consumer's convenience, such as wire fees, notary fees, and endorsement fees; and changes due to consumer-seller negotiations or as a result of local custom or practice. A large bank stated that small increases in numerical disclosures other than the cash to close amount should not trigger a new waiting period, and various settlement agents stated that revisions to the seller's side of the transaction also should be exempt. One trade association representing the workforce mobility industry recommended that the final rule include an exemption for consumers who are obtaining a mortgage loan in connection with a corporate-sponsored relocation.

A large bank, a community bank, and trade associations representing banks and financial companies suggested that changes to APR that are within the current TILA tolerances should not require a new waiting period. One trade association representing various mortgage professionals recommended a ten percent tolerance for changes in closing costs. Other commenters recommended that the Bureau make adjustments to the exemptions included in the proposal.

Many commenters supported exemptions but believed the proposed exemptions were too narrow. A trade association representing real estate agents anticipated that creditors and settlement agents would be likely to interpret the proposed exemptions cautiously, which would lead to the three-business-day redisclosure period being invoked frequently, imposing costs on consumers.

Trade associations representing banks and financial companies were concerned that sellers could game the proposed exemption for changes due to consumer-seller negotiations at proposed § 1026.19(f)(2)(i) and deliberately postpone closings. Other commenters requested that the exemption should account for other seller-related changes. A trade association representing banks, a non-depository lender, and a large bank requested that the proposed exemption be expanded to cover additional changes to the transaction that might arise from a consumer-seller negotiation affecting the terms of the purchase-and-sale agreement, such as a property price reduction that might result in a change in the loan amount and the reduction or elimination of mortgage insurance.

The Bureau received substantially more comment on the proposed $100 de minimis exemption under proposed § 1026.19(f)(2)(ii). Many commenters representing views from across the real estate industry and a member of Congress believed $100 was inadequate, as discussed above. A trade association representing the settlement service provider industry believed the threshold should be based on costs that are significant enough that the consumer would need three business days to decide whether to continue with the transaction. Many commenters, including a member of Congress, recommended that the de minimis threshold should be based on a percentage or a ratio relative to the loan amount or property value to account for consumers who may have different price sensitivities, market diversity, and the effects of inflation. Commenters proposed a range of alternatives to the $100 exemption: a percentage of the loan amount or the sale price of the property (commenters suggested thresholds ranging between 0.001 to 1 percent); a fixed dollar amount (commenters suggested thresholds ranging between $200 and $1,000); or the greater of a fixed dollar amount or a percentage. Other commenters recommended that the final rule allow creditors to guarantee third-party charges so they cannot change, provided the rule offers creditors relief from liability under RESPA section 8. A large bank and trade associations representing banks and financial companies recommended that the rule make the de minimis exemption available for any changes in fees, without regard to whether they are finance charges or which tolerance level applies to them.

Commenters recommended that the proposed three-business-day redisclosure requirement either be shortened or eliminated. A trade association commenter representing the views of mortgage professionals and affiliated service providers explained that shortening the timing of the Closing Disclosure would allow flexibility rather than unnecessary delays due to redisclosure and enforced waiting periods. Commenters also recommended that the redisclosure waiting period be limited to one day or 24 hours. One settlement agent commenter recommended that the final rule eliminate redisclosure waiting periods. The commenter believed that any bait-and-switch abuses would be better addressed through enforcement actions.

Requests for clarification. Commenters requested that the Bureau clarify several aspects of the proposed redisclosure requirements. A community bank commenter requested clarification on whether the Closing Disclosure must be provided again at consummation. This commenter was concerned that two closings could arise under the rule: one to provide the Closing Disclosure and one to sign the final loan documents. One individual consumer asked whether the three-business-day waiting period would eliminate the three-business-day right of rescission. A large bank and two trade associations representing banks and financial companies asked whether changes in interest rate or APR, either within or outside of the TILA tolerances, would trigger a new three-business-day period. Commenters also asked whether a new three-business-day period would be triggered if a fee was listed in the wrong category on the form, if changes were made to the escrowed items, if the consumer requests a change to how funds will be disbursed to others, if loan principal and periodic payments are reduced slightly, or if a creditor's approximate cost of funds calculation changes. One settlement agent commenter requested clarification on what would constitute a redisclosure. This commenter also requested clarification on which party would pay or absorb costs associated with any redisclosures. Trade associations representing banks and financial companies requested that the Bureau clarify that the de minimis threshold exemption at proposed § 1026.19(f)(2)(ii) was an aggregate threshold and did not apply to any particular costs.

Final Rule

The Bureau has considered the comments and ex parte submissions on this issue submitted by members of Congress. Based on the extensive and detailed comments the Bureau received on the types of changes that can occur after the Closing Disclosure is first provided, the final rule revises the proposed rule's exemptions to the redisclosure waiting period requirement to reduce the risk of unintended and potentially harmful consequences for consumers and the real estate market. As explained in the section-by-section analyses of § 1026.19(f)(1)(i) and (f)(1)(ii)(A) above, the final rule requires that consumers receive the Closing Disclosure three business days before consummation. However, in response to concerns expressed by commenters about closing delays caused by the proposed redisclosure requirement, the final rule narrows the triggers for a new three-business-day waiting period for changes that may occur after the Closing Disclosure is initially provided.

Under the final rule, if the Closing Disclosure is provided and the APR subsequently becomes inaccurate by exceeding the applicable tolerance, a corrected Closing Disclosure must be provided to the consumer at least three business days before consummation (§ 1026.19(f)(2)(ii)(A)).[239] In addition, the final rule requires redisclosure with a new three-business-day waiting period in two circumstances not currently provided for in Regulation Z: where the loan product changes (§ 1026.19(f)(2)(ii)(B)) and where a prepayment penalty is added (§ 1026.19(f)(2)(ii)(C)). The Bureau believes that a requirement that limits a redisclosure waiting period to these three situations in this final rule appropriately balances the consumer benefits of advance disclosure against the potential costs associated with a redisclosure waiting

[239] Currently, corrected TILA disclosures must be provided to the consumer at least three business days before consummation if the previously disclosed APR becomes inaccurate. *See* § 1026.19(a)(2)(ii). The final rule generally maintains this trigger, although the final rule applies the redisclosure requirement to the Closing Disclosure under final § 1026.19(f)(2)(ii)(A).

period.

While the proposed redisclosure requirement and narrow exemptions would provide a major incentive for industry to finalize settlement costs earlier in the process, the Bureau is concerned that creditors or settlement agents may not be in a position to ensure that all such costs will be known with certainty by the time the Closing Disclosure is first delivered. The breadth and specificity of comments on this issue demonstrated that settlement costs derive from a multitude of sources, including third-party lenders, local government entities, sellers, homeowners' associations, and a host of third-party settlement service providers; and such costs may change based on events outside the control of any one party. Further, the Bureau is concerned that the proposed redisclosure requirement and narrow exemptions could prevent consumers from making adjustments or informed purchases when it may be in their interest, or even necessary, to do so. For example, as some commenters noted, the cash to close amount could increase above the de minimis exemption if a consumer requests a smaller principal loan amount before consummation in exchange for making a larger down payment.

Accordingly, the final rule narrows the circumstances under which changes between the initial provision of the Closing Disclosure and consummation will trigger an additional three-business-day waiting period. The final rule omits proposed § 1026.19(f)(2)(i) and (f)(2)(ii) and instead revises the three-business-day waiting period redisclosure triggers to three specific circumstances: the transaction's previously disclosed APR becomes inaccurate, the loan product changes, or a prepayment penalty provision is added to the transaction. Thus, if one of those events occurs between the time the initial Closing Disclosure is provided and consummation, the creditor must provide a corrected Closing Disclosure with all changed terms, and must ensure that the consumer receives the disclosure three business days before consummation. These events are described in final § 1026.19(f)(2)(ii). If changes for any other reason occur after the initial Closing Disclosure is provided, the creditor must provide a corrected Closing Disclosure reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation, pursuant to § 1026.19(f)(2)(i).

Difficulties associated with a de minimis exemption. The final rule does not include the proposed de minimis exemption for changes in closing costs in light of comments received and the difficulty in identifying an appropriate dollar threshold. Commenters provided extensive feedback demonstrating why designing a reliable de minimis exemption would be difficult, and they identified a large number of factors that might influence changes in closing costs. However, as the Bureau noted in the proposal's analysis under section 1022 of the Dodd-Frank Act, the Bureau lacks reliable market-wide data of the types, size, or frequency of costs that typically change between the early TILA disclosure and RESPA GFE and the disclosures provided at consummation. The Bureau appreciates that increases in costs before consummation vary based on a variety of factors, including those dependent on local custom. The extent of these variables complicates the development of a reliable threshold.

Changes requiring a new three-business-day waiting period before consummation. In light of the potentially serious consequences of delayed closings for all parties to a transaction and the market generally, the Bureau believes a mandatory redisclosure waiting period should be limited to situations that have the potential to impose significant, long-term financial impacts on consumers. Unlike one-time costs paid at settlement, these changes can impose costs that can carry significant, long-term consequences for consumers, such as higher interest rates, an adjustable rate feature for which consumers may be unprepared, or a prepayment penalty that could preclude refinancing.[240] In addition, because changes to the loan product and the addition of a prepayment penalty involve complex decisions that affect consumers over the life of the loan, the Bureau believes consumers will benefit from having sufficient time to consider whether to accept such changes.[241]

As noted in the section-by-section analysis of § 1026.19(f)(1)(i), settlement agent commenters in support of a general three-business-day requirement explained that such a requirement would benefit consumers who are surprised at the closing table when they discover major changes to their loan product. The Bureau believes this rule is likely to encourage creditors to ensure consumers have time to consider the tradeoffs involving higher APRs, different loan products, or prepayment penalties sufficiently in advance of consummation to avoid the risk of closing delays. The final rule therefore limits the redisclosure and new waiting period requirements to cases in which a loan's previously disclosed APR changes outside of the TILA tolerance, the loan product changes, or where a prepayment penalty is added. Narrowing the redisclosure triggers to these circumstances will reduce the frequency of closing delays and, in light of the other consumer protections regarding settlement charges in this final rule, will, on balance, benefit consumers.

Further, the Bureau believes the final rule is in line with the goals of other consumer protections advanced by Congress in response to the recent financial crisis. Congress recognized

[240] Although some changes to APR may result from one-time costs affecting the finance charge that are paid at consummation, APR also is a metric for other long-term costs of credit. It also is the metric MDIA relies on to determine when final TILA disclosures must be provided three business days before consummation.

[241] Research indicates that cognitive processes take more time when evaluating changes in terms. *See, e.g.*, Christopher Chabris *et al.*, *The Allocation of Time in Decision-Making*, Journal of the European Economic Association (2009) (decision-makers spend more time on decisions when their estimates of the value of the best option is closer to the estimate of the value of the next best option); Mieneke W.H. Weenig and Marleen Maarleveld, *The Impact of Time Constraint on Information Search Strategies in Complex Choice Tasks*, Journal of Economic Psychology (2002) (in complex choice tasks, screening is based on fewer attributes when time pressure is imposed).

the unique risks associated with changes to APR in 2008 under MDIA as well as the risks posed by certain loan products and prepayment penalties in 2010 under the Dodd-Frank Act.[242] While the regulations adopted in the Bureau's 2013 ATR Final Rule and May 2013 ATR Final Rule may reduce the likelihood that consumers obtaining qualified mortgages will be surprised by changes to loan products or the addition of a prepayment penalty, they generally will not prevent creditors from extending credit with such features. Although these rules will make it less likely that such changes will trigger a redisclosure waiting period, the Bureau believes the final rule should maintain this protection where such changes are not precluded. Moreover, the Bureau is concerned that a creditor could extend a qualified mortgage but still make certain last-minute changes to the loan product in manner that presents a risk to consumers, such as changes to the length of the introductory rate period or the frequency of interest rate adjustments, or change the loan to a non-qualified mortgage with certain product features the present unique risks to consumers.

The Bureau believes the final rule strikes the appropriate balance between protecting consumers from undue delays in closings and from bait-and-switch tactics. The Bureau believes the expanded Loan Estimate tolerance rules will address bait-and-switch risk by restricting certain increases in settlement charges. Under the final rule, loan origination charges, required services for which a consumer cannot shop, as well as services provided by a creditor's affiliate would be subject to a zero percent tolerance. In addition, recording fees and required services for which a consumer shops and chooses a non-affiliate identified by the creditor would be

[242] *See, e.g.*, Dodd-Frank Act sections 1412, adding TILA section 129C(b) (generally defining a "qualified mortgage" as one that, among other things, does not contain negative amortization, interest-only payments, or balloon payments) (15 U.S.C. 1639c(b)); Dodd-Frank Act section 1450 (amending the contents of the special information booklet under RESPA section 5(b) to include discussion of balloon payments, prepayment penalties, and the advantages of prepayment) (12 U.S.C. 2604(b)).

subject to an aggregate ten percent tolerance. *See* section-by-section analyses of § 1026.19(e)(3)(i) and (ii). The Bureau believes there is limited consumer risk with respect to items not covered by the Loan Estimate tolerances, such as prepaid interest, insurance premiums, escrowed amounts, and settlement costs disclosed pursuant to § 1026.38(g)(4), which typically involve adjustments and payments related to obligations and other encumbrances that commonly must be paid as a condition to close.[243]

Although the final rule leaves some room for certain charges to change before closing without triggering an additional three-business-day waiting period, the Bureau believes such changes pose less harm to consumers than delaying closings because of these changes. For example, the final rule does not require a new waiting period for optional services for which a consumer shops independently, which costs are not subject to a good faith tolerance limit under § 1026.19(e)(3). Commenters explained that consumers frequently shop for some of these services in the days prior to closing for a number of reasons. For example, commenters explained that some consumers wait to purchase an owner's title insurance policy, and others purchase unexpected notary and courier services that may be necessary in rural areas where consumers cannot attend a closing in person, or to accommodate last-minute child-care or employment obligations. The final rule does not require a new waiting period because many of these costs are incurred to address unforeseen circumstances, they are generally one-time costs that are small relative to the entire transaction, and because consumers have an opportunity to

[243] For example, because prepaid interest is based on an underlying interest rate, increases in prepaid interest are relatively predictable based on the number of days that still remain in the month after closing and the number of days prepaid interest accumulates. Additionally, because prepaid interest is a finance charge under Regulation Z, revisions to prepaid interest would be reflected in the loan's APR, changes to which are governed by TILA's three-business-day redisclosure requirement and rescission rules. Further, interest rates are locked in many instances, in which cases the only variable is the day of closing.

shop for these services independently.[244]

Exemptions recommended by commenters. Commenters suggested additional exemptions that are not included in the final rule. The Bureau believes that significant operational challenges could arise if the final rule were to include a de minimis threshold and provided for a panoply of additional exemptions from the redisclosure waiting period (*e.g.*, exemptions for prepaid interest, escrowed amounts, changes to the seller's side of the transaction, or consumer-requested changes). As noted by several commenters, a final rule that included a long list of exemptions could increase regulatory complexity and impose substantial compliance costs on industry, especially smaller entities that may not have a large compliance staff, but may not provide any additional consumer benefit compared to the narrowed triggers the Bureau is finalizing. In addition, the Bureau does not believe it is practicable to list with specificity every situation that might warrant an exemption, and doing so may create confusion and unnecessary closing delays.

Cost of redisclosure. One commenter requested clarification on which party would be responsible for paying and absorbing costs associated with redisclosures of the Closing Disclosure. Final § 1026.19(f)(5) provides that no fee may be imposed on any person, as a part of settlement costs or otherwise, by a creditor or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for the preparation or delivery of the disclosures required under § 1026.19(f)(1)(i). Other than this provision, § 1026.19(f) does not address which party is responsible for paying or absorbing costs associated with providing corrected Closing Disclosures.

[244] With respect to insurance premiums that a consumer shops for independently, the Bureau believes other means are available for limiting consumer harm, such as a competitive marketplace for property insurance premiums, or, in the case of other insurance products, advance disclosures that such products are optional. *See, e.g.*, § 1026.4(d)(1) and (2) (conditioning the treatment of certain credit and property insurance premiums as a "finance charge" on the provision of advance disclosures); § 1026.37(g)(4) (Loan Estimate disclosures for owner's title insurance).

Consumer's right to inspect. Current Regulation X § 1024.10(a) provides that the settlement agent shall permit the borrower to inspect the RESPA settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. *See* 12 CFR 1024.10(a). The current Regulation X provision implements RESPA section 4(b)(2).

In the proposal, the Bureau did not propose retaining this requirement because, under the proposed rule, the creditor would have been required to deliver the Closing Disclosure three business days before consummation, and redisclose with an additional three-business-day waiting period if any of the actual terms changed, except in very limited circumstances described in the section-by-section analysis of § 1026.19(f)(2). Thus, under the proposal, the disclosures consumers would have received three business days before consummation would have been nearly accurate, other than for a narrow set of changes permitted under the exemptions in proposed § 1026.19(f)(2). Even if changes occurred after the initial Closing Disclosure was provided under the proposal, consumers would still have received a nearly accurate revised Closing Disclosure three business days before consummation. As a result, the Bureau determined that it was unnecessary to include the RESPA inspection requirement in the integrated disclosures.[245]

Several industry commenters requested that the Bureau return to the one-business-day requirement to inspect the Closing Disclosure. A community bank commenter and a trade association representing bank compliance officers recommended that the rule include a one-day right to inspect as an alternative to a three-business-day redisclosure period. The commenters

[245] The Bureau noted that certain Dodd-Frank Act amendments could be read as overriding the RESPA inspection requirement, but did not ground proposed § 1026.19(f)(1)(ii)(A) on such an interpretation. *See* 77 FR 51116, 51175, n.145.

stated that, while providing the Closing Disclosure three business days before closing may be beneficial once, any changes should be addressed within the three-business-day period and could be previewed at least one day before closing without necessitating three days repeatedly.

The Bureau has considered these comments and believes that, in light of the changes made in the final rule to the proposed redisclosure provisions, it is appropriate to include in the final rule a right to inspect the Closing Disclosure one business day before consummation. As discussed above, the final rule permits a greater range of changes to occur between the time the Closing Disclosure is initially provided (three business days before consummation) and consummation. Thus, because the Closing Disclosure may change before consummation without triggering a new three-business-day waiting period, except in the three circumstances discussed above, the Bureau believes it is appropriate to implement RESPA section 4, which gives borrowers the right to inspect the settlement statement one business day before settlement, by giving consumers the right to inspect the Closing Disclosure one day before consummation. The Bureau believes that implementing this statutory right will reduce the likelihood that consumers will be surprised by changes to the Closing Disclosure at the point of consummation. Moreover, the Bureau believes a one-day right to inspect will be less disruptive to the efficient operation of closings than a three-business-day redisclosure requirement.

For the reasons discussed above, the final rule adopts an inspection provision in § 1026.19(f)(2)(i). Under this final rule, notwithstanding the requirement to provide corrected disclosures at or before consummation, the creditor must permit the consumer to inspect the Closing Disclosure, completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately preceding consummation. The final provision also includes language similar to that in current Regulation X § 1024.10(a), stating that the creditor may omit from inspection items related only to the seller's transaction.

This provision is similar to current Regulation X § 1024.10(a) but differs in certain respects. Unlike the current provision, which applies to the "settlement agent," the final rule applies to the "creditor." The Bureau recognizes that RESPA section 4(b) applies to "the person conducting the settlement." 12 U.S.C. 2603(b). However, the final rule applies this requirement to creditors instead of settlement agents because § 1026.19(f)(1)(i) requires that creditors provide the Closing Disclosure. Nonetheless, pursuant to § 1026.19(f)(1)(v), the settlement agent may fulfill the creditor's responsibilities under § 1026.19(f)(2)(i). Comment 19(f)(2)(i)-2 addresses the settlement agent's role in permitting the consumer the right to inspect the Closing Disclosure. Settlement agents are subject to the requirements of § 1026.19(f)(1)(v), as discussed in the section-by-section analysis of that section above.

The final rule also uses the term "consumer" instead of "borrower," consistent with the terminology of Regulation Z. In addition, unlike the current provision in RESPA and Regulation X, which permits borrowers the right to inspect the RESPA settlement statement the business day immediately preceding "settlement," the final rule permits inspection during the business day immediately preceding "consummation." The final rule applies this requirement to the business day before consummation instead of settlement because the final rule requires delivery of the Closing Disclosure at or before "consummation." *See* the section-by-section analysis of § 1026.19(f)(1)(ii)(A). "Business day" in this provision is defined under § 1026.2(a)(6), as the day on which the creditor's offices are open to the public for carrying on substantially all of its business functions." This definition is substantially similar to the definition in Regulation X § 1024.2(b) that is used in the current inspection requirement in Regulation X § 1024.10(a). The Bureau believes it would be burdensome to require the inspection to occur on days creditors may not currently be open for business. *See* the section-by-section analysis of § 1026.2(a)(6).

The final rule does not contain an exemption for certain transactions currently implemented in Regulation X § 1024.10(d). The current provision in Regulation X provides generally that, when the borrower or the borrower's agent does not attend the settlement, or when the settlement agent does not conduct a meeting of the parties for that purpose, the transaction is exempt from the right to inspect, except that the RESPA settlement statement must be mailed or delivered as soon as practicable after settlement. The final rule does not include this exemption because the final rule requires that the Closing Disclosure be provided at or before consummation in all cases, regardless of whether an in-person settlement is conducted.

As discussed in more detail below, pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the final rule adjusts and modifies the requirement of RESPA section 4(b)(2) allowing a one-business-day right to inspect the settlement statement from the person conducting the settlement. Specifically, the final rule adopts § 1026.19(f)(2)(i) to require creditors to permit consumers to inspect the Closing Disclosure, completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately before consummation, and that the creditor may omit from inspection items related only to the seller's transaction.

The Bureau believes adjusting the application of RESPA section 4(b)(2) is within its general mandate under Dodd-Frank Act sections 1032(f), 1098, and 1100A to prescribe integrated disclosures, which requires that the Bureau reconcile differences in coverage between the two statutes for the disclosure requirements under TILA and sections 4 and 5 of RESPA. As discussed above in the section-by-section analyses of § 1026.19(f)(1)(i) and (f)(1)(v), to satisfy the integration mandate, the Bureau must reconcile existing differences between TILA and RESPA. Accordingly, the final rule requires generally that the creditor provide the Closing Disclosure. RESPA section 4(b) imposes an obligation on “the person who will conduct the settlement” to permit the borrower a right to inspect the forms “during the business day immediately preceding the day of settlement.” The Bureau believes it is necessary to reconcile this requirement with the requirement under TILA section 128(b)(2)(D), as amended by MDIA and the Dodd-Frank Act, and implemented in this final rule under § 1026.19(f)(1)(i) requiring advance delivery of the Closing Disclosure by the creditor.

Final provisions. Final § 1026.19(f)(2)(i) provides that, except as provided in § 1026.19(f)(2)(ii), if the disclosures provided under § 1026.19(f)(1)(i) become inaccurate before consummation, the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. Final § 1026.19(f)(2)(i) also provides that, notwithstanding the requirement to provide corrected disclosures at or before consummation, the creditor shall permit the consumer to inspect the disclosures provided under § 1026.19(f)(1)(i), completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately preceding consummation, but the creditor may omit from inspection items related only to the seller’s transaction.

Final § 1026.19(f)(2)(ii) provides that, if one of the following disclosures provided under § 1026.19(f)(1)(i) becomes inaccurate in the following manner before consummation, the creditor shall ensure that the consumer receives corrected disclosures containing all changed terms in accordance with the requirements of § 1026.19(f)(1)(ii)(A): (A) the annual percentage rate disclosed under § 1026.38(o)(4) becomes inaccurate, as defined in § 1026.22; (B) the loan product is changed, causing the information disclosed under § 1026.38(a)(5)(iii) to become inaccurate; or (C) a prepayment penalty is added, causing the statement regarding a prepayment penalty required under § 1026.38(b) to become inaccurate.

The final rule adopts proposed comment 19(f)(2)(i)-1, modified to conform to the final rule, and adopts proposed comments 19(f)(2)(i)-1.i and -1.ii substantially as proposed. Proposed comments 19(f)(2)(i)-1.i and -1.ii would have provided examples of changes due to consumer-seller negotiations to illustrate the proposed exemption that was designed for that type of scenario. The Bureau believes the proposed commentary serves as useful guidance for the final rule because consumer-seller negotiations are a common reason that closing costs change. This commentary is intended to be illustrative and not representative of all changes that may occur prior to consummation. The final rule also includes comment 19(f)(2)(i)-1.iii, which is similar to proposed comment 19(f)(2)(ii)-1. The comment illustrates a scenario in which a consumer-seller negotiation and an understated insurance premium cause closing costs to increase but do not trigger a new waiting period.

Comment 19(f)(2)(i)-1 has been revised to conform to final § 1026.19(f)(2)(i). Comments 19(f)(2)(i)-1.i, -1.ii, and -1.iii also include technical revisions to clarify that the creditor must provide corrected disclosures so that the consumer receives them at or before consummation. Comment 19(f)(2)(i)-2 addresses the consumer's right to inspect the Closing Disclosure during the business day before consummation. The comment explains that a settlement agent may satisfy the requirement to permit the consumer to inspect the disclosures under § 1026.19(f)(2)(i), subject to § 1026.19(f)(1)(v).

Comment 19(f)(2)(ii)-1 contains guidance illustrating when the changes specified by § 1026.19(f)(2)(ii)(A) through (C) trigger a new waiting period and corrected disclosures.

Comment 19(f)(2)(ii)-1.i includes examples in which the APR changes. These example are similar to existing commentary found in § 1026.19(a)(2)(ii) that implements MDIA's timing requirements. Comment 19(f)(2)(ii)-1.i has been modified to reflect the requirements of § 1026.19(f)(2), to provide additional explanation for why different APRs in the examples would necessitate a new waiting period, and technical revisions for clarity. Comment 19(f)(2)(ii)-1.ii includes examples where the loan product changes, and comment 19(f)(2)(ii)-1.iii includes examples where a prepayment penalty is added.

Final § 1026.19(f)(2)(i) and (ii) and their associated commentary are adopted pursuant to the Bureau's legal authority under sections 105(a) of TILA, 19(a) of RESPA, 1032(a) of the Dodd-Frank Act, and, for residential mortgage transactions, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. The Bureau has considered the purposes for which it may exercise its authority under section 105(a) of TILA and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will help consumers avoid the uninformed use of credit by ensuring that consumers receive disclosures of the actual terms and costs associated with the mortgage loan transaction early enough that consumers have sufficient time to become fully informed as to changes to APR, changes to the loan product, and the addition of a prepayment penalty, which can impose long-term costs on consumers. The final rule and commentary also will help consumers avoid the uninformed use of credit by requiring that they receive corrected disclosures reflecting any changes to the actual terms of the transaction at or before consummation, and by requiring that consumers be permitted a right to inspect the Closing Disclosure for any changes that may occur before consummation. The final rule and commentary are consistent with section 129B(e) of TILA because failing to provide borrowers with enough time to become fully informed of major terms and costs of the transaction is not in the interest of the borrower. Similarly, failing to inform borrowers of any changed terms at or before consummation is not in the interest of the borrower.

The final rule and commentary are adopted pursuant to the Bureau's authority under sections 105(a) of TILA and 19(a) of RESPA. The Bureau believes that the final rule and commentary will carry out the purposes of TILA and RESPA by ensuring meaningful disclosure of credit terms, more effective advance disclosure of settlement costs, and will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, consistent with sections 105(a) of TILA and 19(a) of RESPA, respectively. The Bureau also has considered the purposes for which it may exercise its authority under section 19(a) of RESPA and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will ensure more effective advance disclosure of settlement costs by requiring that creditors permit consumers a right to inspect the Closing Disclosure during the business day preceding consummation; by requiring that, if settlement costs change before consummation, creditors provide a corrected Closing Disclosure containing all changed terms at or before consummation; and by permitting consumers to make necessary changes affecting the settlement of their transactions.

The final rule and commentary are consistent with Dodd-Frank Act section 1032(a) because the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan and settlement services if consumers receive corrected disclosures three business days before consummation when changes occur to the transaction that can impose significant, long-term risks on consumers. The Bureau believes these risks arise where the loan's previously disclosed APR becomes inaccurate, the loan product changes, or a prepayment penalty is added. In addition, the final rule and commentary are consistent with Dodd-Frank Act section 1032(a) because the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan and settlement services, if consumers receive the disclosures reflecting all of the terms and costs associated with their transactions at or before consummation, and if consumers are permitted a right to inspect the disclosures for changed terms during the business day before consummation.

In addition, the Bureau has considered the purposes for which it may exercise its authority under section 1405(b) of the Dodd-Frank Act and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will improve consumer awareness and understanding of the mortgage loan transaction by ensuring that consumers receive the disclosures reflecting major changes to the terms and costs associated with their transactions three business days in advance of consummation, by ensuring that consumers receive corrected disclosures reflecting any changes to the terms of the transaction at or before consummation, and by ensuring that consumers have a right to inspect the disclosures reflecting all of the terms and costs associated with their transactions during the business day before consummation. The final rule and commentary also will be in the interest of consumers and in the public interest because the final rule and commentary may eliminate the opportunity for bad actors to surprise consumers with significant unexpected costs at the closing table, when consumers are less able to question such costs. Finally, the Bureau also is adopting the final rule and commentary pursuant to its authority under sections 1098, 1100A and 1032(f) of the Dodd-Frank Act.

19(f)(2)(iii) Changes Due to Events Occurring After Consummation

The Bureau proposed § 1026.19(f)(2)(iii), which would have provided that, if an event occurs after consummation that causes the disclosures to become inaccurate, and such inaccuracy results solely from payments to a government entity in connection with the transaction, the creditor shall deliver corrected disclosures to the consumer no later than the third business day after the event occurs, provided the consumer receives the corrected disclosures no later than 30 days after consummation. The proposal was intended to address situations in which some costs are not known with absolute certainty until the loan documents are recorded. For example, a locality could change its schedule of recording fees, without advance notice, the day after the consumer signs the mortgage loan documents, but before the documents are recorded. The Bureau stated its belief that the final rule should provide flexibility to address this occurrence, so that these changes do not trigger an additional three-day waiting period. The Bureau proposed this provision pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA. Proposed comment 19(f)(2)(iii)-1 would have clarified that this provision applies to payments imposed by government entities, such as taxes, recording fees, and other taxes related to the real estate transaction, and provided several illustrative examples. The Bureau solicited feedback on whether changes, other than payments to government entities, may occur after the real estate closing, and whether the regulation should provide additional flexibility for such changes.

Comments

The Bureau received public comments and an ex parte submission regarding post-consummation redisclosure requirements. Bank commenters and a GSE were concerned about creditor liability resulting from post-consummation redisclosure requirements, given that third-party fee changes, including recording fees and other charges, are often outside of the creditor's control. Commenters recommended expanding the exemption for post-consummation changes beyond government entity payments, to cover any post-closing fee that is not under the creditor's control, such as settlement agent fees, homeowner's association fees, or third-party lender charges on a loan that is being refinanced. A trade association representing banks in a midwestern State, settlement agent commenters, and trade associations representing escrow agents and settlement agents explained that consummation of the loan and settlement of the entire transaction may occur at different times. Commenters explained that settlement may not end until several days after consummation of the loan. Commenters offered a variety of examples of events that could occur after consummation but before settlement that may cause amounts listed on the Closing Disclosure to change in addition to payments to a government entity, such as changes made by a consumer and seller during a final walk-through, the resolution of title issues, and other third-party charges.

A large bank and a trade association representing settlement agents explained that creditors occasionally understate final charges, but frequently will absorb the cost of the understatement. The commenter observed that post-closing redisclosure for these types of changes that do not affect the consumer will lead to consumer confusion and recommended instead requiring post-closing redisclosure only for changes that will impact the consumer, *i.e.*, when changes to the Closing Disclosure entitle the consumer to a refund.

A GSE and a large bank explained that creditors frequently do not know if a government entity has made a change that would make the Closing Disclosure inaccurate during the 30 days after consummation because changes are frequently not disclosed until documents are stamped and returned. Commenters also explained that documents are often not returned until 60-180 days, and sometimes a year, after documents are recorded because of delays in government processing. Commenters were concerned that complying with the proposal's 30-day period after consummation would be infeasible and recommended that the final rule extend the deadline and harmonize it with the deadline for providing revised disclosures for clerical errors in proposed § 1026.19(f)(2)(iv). A large bank recommended that a creditor should be required to provide a revised disclosure within 30 days of learning of an event, rather than within 30 days of consummation. A GSE recommended that creditors be required to provide the revised disclosure within seven business days of being notified of the issue, regardless of how long ago the loan was consummated.

Final Rule

In general. After considering the comments and ex parte submission on this issue, the final rule adopts a requirement to provide corrected disclosures for post-consummation events. However, as discussed in more detail below, the final rule does not limit such events to changes arising from payments to a government entity to account for additional changes that may occur after consummation. In addition, the final rule modifies the time period in which corrected disclosures must be provided.

There is a clear consumer benefit to disclosing actual costs at or before consummation. However, based on comments received, the Bureau recognizes that this may simply not be feasible in certain instances. The Bureau understands from trade associations representing creditors and settlement agents that, in certain jurisdictions, consummation can occur several days before settlement concludes.

RESPA section 4 provides that the settlement statement shall contain the amount imposed upon the consumer in connection with the settlement, and Regulation X § 1024.8(b)(1) sets forth the general rule that the settlement agent shall state the actual charges paid by the borrower and seller on the RESPA settlement statement. However, RESPA, Regulation X, and the HUD RESPA FAQs do not directly address subsequent revisions to the RESPA settlement statement, other than for correcting inadvertent or technical errors or curing tolerance violations. Thus, RESPA and Regulation X provide flexibility to account for the variety of settlement practices across the country.[246] Furthermore, Regulation Z also provide flexibility for changes that may occur after a disclosure is provided. Regulation Z § 1026.17(e) currently provides that events that occur subsequent to the provision of a disclosure do not render the disclosure inaccurate, but that redisclosure under certain circumstances may be required.

In integrating TILA's and RESPA's disclosure requirements, the Bureau believes it is appropriate for the final rule to provide flexibility to account for post-consummation events that may make earlier disclosures inaccurate to reflect the variety of settlement practices across the country. Without a more flexible exception to account for post-consummation changes, the Bureau is concerned that creditors and settlement agents may face compliance difficulties with disclosing the "actual terms" of the transaction at or before consummation, but before settlement is concluded. Concern about liability risk may create unnecessary inefficiencies and disrupt the consumer's and seller's transactions.

Post-consummation events requiring redisclosure. As discussed above, the Bureau intends for § 1026.19(f)(2)(iii) to account for changes that may occur during the normal settlement process after the point of "consummation" of the credit transaction. Accordingly, the

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[246] *See, e.g.*, RESPA section 4(a) ("The Bureau may, by regulation, permit the deletion from the forms prescribed under this section of items which are not, under local laws or customs, applicable in any locality") (12 U.S.C. 2603(a)) and 12 CFR 1024.10(d) (exemption, in certain circumstances, from inspection and delivery requirements of the RESPA settlement statement where the borrower or borrower's agent does not attend the settlement, or when the settlement agent does not conduct a meeting of the parties for that purpose).

rule refers to “events in connection with the settlement of the transaction” to reflect similar language in RESPA section 4(a), which requires that the RESPA settlement statement itemize all charges “in connection with the settlement.” 12 U.S.C. 2603(a).

Section 1026.19(f)(2)(iii) provides only for revisions for inaccuracies due to events occurring after consummation. Inaccuracies due to events occurring at or before consummation are covered by the other provisions of § 1026.19(f)(1)(i), (f)(2)(i), and (f)(2)(ii). The Bureau expects creditors and, as applicable, settlement agents, will conduct due diligence to ensure the Closing Disclosure contains accurate information at or before consummation, consistent with the requirements of § 1026.19(f). As discussed in the section-by-section analysis of § 1026.19(f)(1)(v) above, creditors may divide responsibility for providing the Closing Disclosure with settlement agents.

The final rule requires redisclosure only for post-consummation events that change an amount actually paid by the consumer. The Bureau does not believe consumers would benefit from revisions to the Closing Disclosure due to post-consummation events that do not affect charges imposed on them. Further, the Bureau believes this approach is consistent with RESPA and Regulation X. RESPA section 4 provides that the settlement statement shall contain the amount imposed upon the consumer in connection with the settlement. Regulation X § 1024.8(b)(1) provides the general rule that the settlement agent shall state the actual charges paid by the borrower and seller on the RESPA settlement statement. Thus, the Bureau believes a redisclosure to the consumer after consummation should be required only if a subsequent event changes a charge actually paid by the consumer and not for any change to the transaction.

The final rule imposes a redisclosure requirement based on changes attributable to post-consummation events occurring during the 30-day period following consummation. The Bureau believes a 30-day period will account for most events that would change the amount actually paid by the consumer and will provide flexibility to account for the variety of settlement practices across the country. The Bureau believes a 30-day period to identify post-consummation events is sufficient in light of comments and its understanding of current industry practice.

Several commenters, including a GSE and a large bank provided feedback that backlogs in county recorder's offices have resulted in delays of several months or, in some cases, a year. To address this issue, commenters recommended that the final rule require that creditors provide corrected disclosures within some period of time (*e.g.*, seven or 30 days) of being notified of a change to the actual terms of the transaction, without regard to how long after consummation such event occurs. The Bureau recognizes that the charges for some items, such as recording fees, may not be known with certainty until several months, and sometimes a year, after consummation. However, final § 1026.19(f)(2)(iii) does not provide for a long-term or open-ended period to account for changes to the Closing Disclosure because the Bureau does not believe such a requirement would provide significant consumer benefit in relation to the potential burden. The Bureau is concerned that such a requirement would impose costly ongoing compliance costs on creditors to monitor and analyze all activity that may increase an amount actually paid by the consumer in connection with the settlement of the transaction.

30-day period for providing corrected disclosures. The Bureau understands that creditors will not necessarily know an event has occurred that may make the Closing Disclosure incorrect at the time the event occurs. Accordingly, the final rule requires redisclosure not later than 30 days after the creditor's receipt of information sufficient to establish that such an event in connection with the settlement of the transaction has occurred. Under final § 1026.19(f)(2)(iii), if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures provided under § 1026.19(f)(1)(i) to become inaccurate, the creditor must deliver or place in the mail corrected disclosures to the consumer not later than 30 days after receiving information sufficient to establish that such event has occurred. The language regarding information sufficient to establish that an event in connection with the settlement of the transaction operates in the same manner as the standard that applies to creditors in the context of providing revised Loan Estimates under § 1026.19(e)(4)(i).

Unlike the standard in § 1026.19(e)(4)(i), which requires creditors to provide revised disclosures within three business days of receiving sufficient information to establish that an event has occurred, final § 1026.19(f)(2)(iii) provides that the creditor may provide corrected disclosures not later than 30 days after receiving information sufficient to establish an event has occurred. The Bureau believes a 30-day period balances creditors' interests in having sufficient time to process revisions to the Closing Disclosure with the interests of consumers in receiving corrected disclosures within a reasonable time after an event occurs. The Bureau also believes a 30-day period is reasonable in light of existing requirements under Regulation X that impose a 30-day deadline after settlement to cure tolerance violations and correct technical errors. Thus, the Bureau believes industry already has systems in place for conducting quality-control reviews during this period.

The 30-day period also is intended to harmonize the time period creditors have to cure tolerance violations that may arise due to events after consummation during the course of settlement under final § 1026.19(f)(2)(v). The Bureau believes this will reduce the number of corrected disclosures consumers may receive after consummation. Some post-consummation events covered by § 1026.19(f)(2)(iii) that cause the Closing Disclosure to become inaccurate also may be a tolerance violation for which a creditor provides a cure under § 1026.19(f)(2)(v). As discussed in more detail in the section-by-section analysis of § 1026.19(f)(2)(v), creditors must provide corrected disclosures to cure a tolerance violation no later than 60 days after consummation. Thus, where a creditor learns of a tolerance violation attributable to a post-consummation event during the 30-day period after consummation, it would comply with § 1026.19(f)(2)(iii) and (f)(2)(v) by providing the consumer with a corrected Closing Disclosure that reflects the tolerance cure not later than 30 days after receiving information sufficient to establish that the event has occurred. In addition to accommodating the 60-day period under § 1026.19(f)(2)(v), the 30-day period under § 1026.19(f)(2)(iii) accommodates the 60-day period under § 1026.19(f)(2)(iv) for providing corrected disclosures correcting non-numeric clerical errors. Thus, the Bureau believes the 30-day period for providing corrected disclosures under § 1026.19(f)(2)(iii) will facilitate compliance and reduce the number of corrected disclosures received by consumers after consummation.

Final provisions. For the aforementioned reasons, the Bureau is adopting § 1026.19(f)(2)(iii) to provide that if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes disclosures required under § 1026.19(f)(1)(i) to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under § 1026.19(f)(1)(i), the creditor shall deliver or place in the mail corrected disclosures within 30 days of receiving information sufficient to establish that such event has occurred. The final rule and commentary use the term "corrected disclosures" rather than "revised disclosures" to reflect the terminology currently used with respect to the final TILA disclosures in Regulation Z and for greater consistency throughout § 1026.19(f). In addition, for consistency with other requirements under § 1026.19(e) and(f), the final rule also requires that the creditor deliver or place in the mail the Closing Disclosure.

The final rule adopts comment 19(f)(2)(iii)-1 with revisions to conform to the final rule as adopted. The comment restates § 1026.19(f)(2)(iii) and contains a cross-reference to comment 19(e)(4)(i)-1 for additional guidance on when sufficient information has been received to establish that an event has occurred for the purposes of § 1026.19(f)(2)(iii). The comment generally adopts the proposed examples illustrating the original provision, but has made conforming changes to reflect the revised timing requirements applicable to § 1026.19(f)(2)(iii) and to illustrate how § 1026.19(f)(2)(iii) interacts with other provisions of the final rule.

Comment 19(f)(2)(iii)-1.i makes a technical revision and omits language from the example in proposed comment 19(f)(2)(iii)-1.i that would have illustrated the discovery of a fee change on the 28th day after consummation. This example is inapplicable in light of the revision to the timing requirement in § 1026.19(f)(2)(iii). Comment 19(f)(2)(iii)-1.ii makes a technical revision and revises the example of proposed comment 19(f)(2)(iii)-1.ii in which transfer taxes owed to the State differ from those previously disclosed to illustrate the timing requirements of final § 1026.19(f)(2)(iii) and the interaction of this provision with final § 1026.19(f)(2)(v) in which a cure for a tolerance violation is provided.

Comment 19(f)(2)(iii)-1.iii modifies the example in proposed comment 19(f)(2)(iii)-1.iii, in which a $500 nuisance abatement assessment is discovered after consummation. The comment revises the example to illustrate a scenario in which the post-consummation event does not result in a change to an amount actually paid by the consumer, but does result in such a change for the seller, pursuant to § 1026.19(f)(4)(ii). Comment 19(f)(2)(iii)-1.iv includes revised language to clarify further the example in which the municipality in which the property is located raises property tax rates ten days after consummation. The comment clarifies that the scenario illustrated is one in which property taxes are raised "effective after the date on which the settlement concludes." The comment explains that § 1026.19(f)(2)(iii) does not require the creditor to provide the consumer with corrected disclosures because the increase in property tax rates is not in connection with the settlement of the transaction.

Final § 1026.19(f)(2)(iii) and its associated commentary will prevent circumvention and evasion of, and will facilitate compliance with, TILA, by ensuring that consumers receive corrected disclosures of the final terms and costs of the transaction, consistent with section 105(a) of TILA. The final rule and commentary are also adopted pursuant to the Bureau's authority to implement section 4 of RESPA, consistent with section 19(a) of RESPA.

19(f)(2)(iv) Changes Due to Clerical Errors

Regulation X § 1024.8(c) generally provides that an inadvertent or technical error in completing the RESPA settlement statement shall not be deemed a violation of section 4 of RESPA if a revised settlement statement is provided within 30 calendar days after settlement. Section 130(c) of TILA provides that creditors and assignees cannot be liable for bona fide errors, including clerical errors. TILA section 130(b) contains a general cure provision, which relieves creditors of civil liability under certain circumstances, including if, within 60 days of identifying an error, the creditor notifies the person concerned and makes whatever adjustments are necessary.[247] RESPA does not contain a general cure provision. Proposed § 1026.19(f)(2)(iv) would have provided that a creditor does not violate § 1026.19(f)(1)(i) if the

[247] "A creditor or assignee has no liability under this section or section 108 or section 112 for any failure to comply with any requirement imposed under this chapter or chapter 5, if within sixty days after discovering an error, whether pursuant to a final written examination or notice issued under section 108(e)(1) or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower." 15 U.S.C. 1640(b).

disclosures contain non-numeric clerical errors, provided the creditor delivers corrected disclosures as soon as reasonably practicable and no later than 30 days after consummation. The Bureau proposed this provision pursuant to its authority under sections 105(a) of TILA and 19(a) of RESPA. Proposed comment 19(f)(2)(iv)-1 would have clarified that clerical errors are errors such as typographical errors, or other minor errors that do not affect the amount owed by the consumer. The Bureau solicited feedback on whether the regulations should provide flexibility for numeric clerical errors, and how such flexibility could be provided without undermining the reliability of the disclosures provided to consumers at or before consummation.

Comments

Commenters requested that the Bureau provide more definitions and clarification of § 1026.19(f)(2)(iv). Two consumer advocacy groups submitting a joint comment requested that the Bureau clarify that a clerical error under § 1026.19(f)(2)(iv) should not include any error regarding the "actual terms of the transaction." They also stated that if an error is discovered before consummation, a revised disclosure should be provided no later than consummation. The commenters recommended that the final rule include in commentary an example of a non-numeric error that would not be considered "clerical" that would require redisclosure before consummation.

A GSE explained that it is not uncommon that clerical errors are noticed months after consummation when a loan file undergoes quality-control review by a secondary market investor. The commenter recommended that the timing of § 1026.19(f)(2)(iv) should be harmonized with § 1026.19(f)(2)(iii), and that creditors should be required to provide a revised disclosure within seven business days of being notified of the error, regardless of how long after consummation the error was discovered. A trade association representing banks requested that the cure period be extended from 30 days to 90 days to account for quality control cycles.

In addition to non-numeric errors, commenters requested that the rule address numeric errors. A large bank requested that new exception should be added for redisclosures required due to numerical typographical errors, without any dollar amount or other threshold. A title insurance company stated that the rule should provide flexibility for “numeric clerical errors,” subject to the Bureau’s promulgation of a specific definition of the term and providing specific examples. The commenter recommended that the final rule include a definition of “numeric clerical errors” limited to inadvertent misstatements of charges known by or previously disclosed to the consumer, where the creditor can document such knowledge. Another title insurance company commenter recommended that numeric errors include errors that do not affect the consumer. A title insurance company stated that, for overstatement and understatement errors, creditors should be required to provide a revised Closing Disclosure within the timeframe under § 1026.19(f)(2)(iv). A title insurance company stated that, for understatement errors, creditors should provide a revised Closing Disclosure at or before consummation and be able to collect additional amounts owed by the consumer, subject to the proposed $100 de minimis threshold.

A large bank requested that the final rule exempt numerical typographical errors, without regard to any dollar amount or threshold, such as when a fee correctly stated on the Loan Estimate as a $2,000 fee is mistakenly stated on the initial Closing Disclosure as a $200 fee. A trade association representing banks suggested that, if a fee is listed in the wrong category of the Closing Disclosure, but the correct amount is disclosed, a corrected Closing Disclosure should be provided at consummation.

Final Rule

Final § 1026.19(f)(2)(iv) is adopted substantially as proposed. The final rule provides a

60-day period for providing corrected disclosures and omits the requirement that creditors provide revised disclosures “as soon as reasonably practicable.” The final rule adopts comment 19(f)(2)(iv)-1 substantially as proposed, modified as discussed above and to conform to the final rule.

By finalizing 1026.19(f)(2)(iv), the Bureau does not intend to modify the scope or applicability of TILA section 130(b) or (c), which sets forth treatment for errors related to certain disclosures. The proposal would have incorporated existing requirements in Regulation X that clarify whether certain technical errors constitute a violation of RESPA section 4. By finalizing this requirement in § 1026.19(f)(2)(iv), the Bureau intends only to clarify that a creditor does not violate § 1026.19(f)(1)(i) if the creditor corrects a non-numeric clerical error within the first 60 days of consummation. The Bureau does not intend to affect statutory liability provisions for other types of errors. Thus, the Bureau does not believe it is necessary to define numeric errors and address how they must be cured in § 1026.19(f)(2)(iv).

Moreover, the Bureau does not believe it would be appropriate to create a category of “numeric clerical errors,” such as those limited to inadvertent misstatements of charges known by or previously disclosed to the consumer where the creditor can document such knowledge. The Bureau does not believe the fact that a charge was disclosed in a different manner to a consumer before an incorrect disclosure was provided is material for purposes of classifying a clerical error. The Bureau is concerned such a classification could undermine the value of the disclosures, which consumers should be able to rely on for accuracy. The Bureau also declines to classify errors based on whether they include errors that affect the consumer. The disclosures required under § 1026.19(f)(1)(i) are required because they contain information relevant to costs associated with the transaction, which inherently affects the consumer.

The Bureau does not believe correcting non-numeric clerical errors will impose a significant compliance burden because curing such errors can be done by providing corrected disclosures rather than making substantial revisions to the consumer's account. The Bureau also notes that it has harmonized the timing requirements for providing corrected disclosures under 1026.19(f)(2)(v) in the final rule, to require that creditors deliver corrected disclosures documenting a cure for tolerance violations no later than 60 days after consummation. The Bureau believes this approach will limit the number of corrected disclosures received by consumers and will facilitate compliance with the disclosure requirements.

In response to comments, the final rule includes an example of a non-numeric error in comment 19(f)(2)(iv)-1 that would not be considered "clerical." However, the Bureau declines to clarify that a clerical error does not include any error regarding the actual terms of the transaction because such language could cause confusion. The requirement to disclose the actual terms of the transaction covers a wide array of disclosures and § 1026.19(f)(2)(iv) applies to a narrow set of errors.

The final rule revises the proposed 30-day period to a 60-day period and removes the condition that revised disclosures be provided "as soon as reasonably practicable." The Bureau believes harmonizing the timing requirements with the timing requirements applicable to § 1026.19(f)(2)(v) will facilitate compliance by helping creditors coordinate providing corrected disclosures that also set forth cures for tolerance violations. As discussed in the section-by-section analysis of § 1026.19(f)(2)(v), the Bureau believes a 60-day period is warranted to facilitate compliance in jurisdictions in which settlement may conclude after consummation. The final rule omits the "as soon as reasonably practicable" language to set forth a clear deadline for compliance. The Bureau does not believe removing this language or extending the period for providing corrected disclosures will harm consumers because the risk posed by disclosures that contain a non-numeric, clerical error is minimal.

The final rule and commentary use the term “corrected disclosures” rather than “revised disclosures” to reflect the terminology currently used with respect to the final TILA disclosures in Regulation Z and for greater consistency throughout § 1026.19(f). In addition, for consistency with other provisions of § 1026.19(f), the final rule also requires the creditor deliver or place in the mail a corrected Closing Disclosure.

Final § 1026.19(f)(2)(iv) and comment 19(f)(2)(iv)-1 will prevent circumvention and evasion of, and will facilitate compliance with, TILA, by ensuring that consumers receive corrected disclosures consistent with section 105(a) of TILA. The final rule and commentary also will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by ensuring that the consumer’s records correctly reflect the terms, payments, and entities involved in the transaction, consistent with section 19(a) of RESPA.

19(f)(2)(v) Refunds Related to the Good Faith Analysis

Neither RESPA nor Regulation Z expressly requires creditors to refund money to the consumer based on variations between the disclosed estimated costs of settlement services and the amounts for such settlement services actually paid by the consumer at consummation. Regulation X § 1024.7(i), however, provides that a lender or mortgage broker violates section 5 of RESPA if any charges at settlement exceed the charges listed on the RESPA GFE by more than the permitted tolerances, provided, however, that the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded at settlement or within 30 calendar days after settlement. As noted above, section 130 of TILA has a similar provision, with respect to civil liability, which relieves creditors and assignees of civil liability under certain circumstances, including if, within 60 days of identifying an error, the creditor notifies the person concerned and makes whatever adjustments are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed.

Accordingly, proposed § 1026.19(f)(2)(v) would have provided that, if amounts paid by the consumer exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor complies with § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer as soon as reasonably practicable and no later than 30 days after consummation, and the creditor complies with § 1026.19(f)(1)(i) if the creditor provides revised disclosures that reflect such refund as soon as reasonably practicable and no later than 30 days after consummation. The Bureau proposed this provision pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and, with respect to residential mortgage loans, section 1405(b) of the Dodd-Frank Act.

Proposed comment 19(f)(2)(v)-1 would have discussed refunds related to the good faith analysis. The proposed comment would have explained the requirement under § 1026.19(f)(2)(v) providing that, if amounts paid by the consumer exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i) if the creditor delivers disclosures revised to reflect the refund of such excess as soon as reasonably practicable and no later than 30 days after consummation. This proposed comment also would have included illustrative examples of these requirements.

Comments

Several commenters believed that the cure period was too narrow, would not give creditors sufficient time to conduct audit reviews or provide an incentive to cure violations after the 30-day period, and appeared arbitrary. Commenters explained that mortgage lending is a cyclical business and a 30-day period would be too short when lending is active. A large bank commenter stated that a 30-day period could prove impracticable when a creditor is reviewing loans purchased from a correspondent lender. The commenter stated that the Bureau proposed to adopt the Regulation X 30-day cure period but did not explain why it did not adopt TILA's cure period or offer any data that would suggest the period under TILA section 130 did not provide adequate consumer protection.

Bank and trade associations representing banks and financial companies also requested that the cure period be measured from the discovery of an error rather than from consummation, consistent with TILA section 130. Commenters explained that certain violations are known at or before consummation, so the cure period would be measured from that point in time. Commenters also explained that cure periods measured more than 30 days from consummation would provide an incentive for creditors to correct errors discovered as part of quality control testing that occurs more than 30 days after consummation. One large bank commenter recommended that cures be provided within 30 days of discovery of an error. A community bank holding company commenter stated that a 90-day period would give creditors additional time to conduct audit reviews. A large bank and a trade association representing banks and financial companies recommended a cure period from the date an error is discovered, consistent with TILA section 130. Several commenters recommended a 60-day cure period measured from the discovery of an error. A trade association representing banks and financial companies, a community bank, and a law firm commenter believed that a 90-day cure period was appropriate, for example, to account for periods of more active mortgage lending and in light of changes in industry practice that have extended quality control periods to comply with additional regulations. A trade association representing banks and financial companies requested that the final rule distinguish between intentional and unintentional violations and that an extended cure period be permitted for unintentional violations.

A consumer advocacy group commenter stated that creditors should be limited to correcting errors before litigation or rescission, and that the final rule should clarify that creditors may only correct errors before the consumer notifies the creditor of an error. The commenter explained that, absent clarification, there would likely be litigation over what constitutes a good faith error and what notice to a creditor triggers the time period for the creditor to correct the error without facing liability. The commenter believed that such a rule would help consumers exercise the right of rescission because it would prevent creditors from making a correction to avoid triggering rescission rights. The commenter also requested that the final rule contain a presumption that systemic errors are not good faith errors because such errors are unlikely to arise in the presence of adequate policies and procedures.

Two consumer advocacy groups submitting a joint comment requested clarification on how refunds would be provided to prevent unjust enrichment by creditors that exceed the good faith estimate tolerances when a consumer finances closing costs. The commenters were concerned that, if the creditor simply issues a cash refund, the consumer would continue paying interest on the financed closing costs. The commenters set forth an example in which a borrower finances $100 of closing costs in a 30-year mortgage loan having an eight percent fixed annual rate, and the creditor sends the consumer a $100 refund check, illustrating that the creditor will still earn $240 on that refund over the life of the loan unless the borrower sends an extra $100 payment to her mortgage servicer.

The commenters explained that typical consumers are unlikely to realize they must use the refund check to pay down the loan to avoid being charged additional interest. The commenters recommended that the final rule add a requirement specifying that, whenever a consumer finances any closing costs, the creditor must apply any refund as a credit against the principal balance of the loan, up to the amount of closing costs financed.

Commenters also requested clarification on the mechanics for tolerance cures. A community bank commenter asked whether a revised Closing Disclosure must be provided with the refund. A trade association representing banks and financial companies requested that the final rule clarify whether settlement agents may cure a tolerance violation. A law firm commenter asked that the final rule clarify that a person's non-compliance with the rule during the cure period would not constitute a violation.

Final Rule

The Bureau has considered the comments on this issue and has determined to finalize § 1026.19(f)(2)(v) with a 60-day period as the deadline for providing refunds for tolerance cures and corrected disclosures reflecting the refund. While Regulation X § 1024.7(i) permits loan originators to cure tolerance violations by reimbursing to the borrower the amount by which the tolerance was exceeded at settlement or within 30 calendar days after settlement, the Bureau believes a 60-day period, measured from consummation, is warranted in light of the revisions to § 1026.19(e)(3) with respect to the good faith estimate requirements and to § 1026.19(f)(2)(iii) with respect to post-consummation events.

Under § 1026.19(e)(3)(i), an estimated closing cost disclosed pursuant to § 1026.19(e) is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed under § 1026.19(e)(1)(i), except as otherwise provided in § 1026.19(e)(3)(ii) through (iv). Comment 19(e)(3)(i)-2 clarifies that, for purposes of § 1026.19(e), a charge "paid by or imposed on the consumer" refers to the final amount for the charge paid by or imposed by the consumer at consummation or settlement, whichever is later. Thus, in jurisdictions where settlement occurs after consummation, some tolerance violations may not be known until some time after consummation. The Bureau believes creditors in those jurisdictions should be permitted to have sufficient time to provide refunds for tolerance violations that may not be known until after consummation, and that a 60-day period after consummation will account for jurisdictions in which settlement occurs after consummation.

Because Regulation X currently provides creditors a 30-day period after "settlement" to cure tolerance violations, the Bureau believes a 60-day period after consummation under the final rule will give all creditors sufficient time to cure tolerance violations. As discussed in the section-by-section analysis of § 1026.19(f)(2)(iii), creditors may need to make revisions for subsequent events occurring within 30 days after consummation. Because a revision under § 1026.19(f)(2)(iii) may result in a tolerance violation, the Bureau believes it is necessary to ensure creditors have a 30-day period to cure such violations and provide corrected disclosures.

The Bureau believes that providing creditors with sufficient time to obtain revised cost information, revise the integrated disclosures, prepare payments for such revised costs or the cures to be paid to consumers, and deliver such payments to consumers will facilitate compliance and ensure accurate disclosures and payments for consumers. The final rule also removes the condition that refunds and revised disclosures be provided "as soon as reasonably practicable," which the Bureau believes will facilitate compliance by establishing a bright-line standard by which revised disclosures must be mailed or delivered.

The Bureau does not believe lengthening the cure period to 60 days after consummation will significantly undermine an existing consumer protection because it is synchronous with the cure period under TILA section 130(b) for errors corrected within 60 days of discovery of the error and because the cure will be provided in the form of a refund. The final rule does not extend the cure period further than 60 days after consummation or measure it from a date other than consummation. The Bureau believes that doing so would undermine the incentive for creditors to conduct quality control reviews as soon as reasonably practicable after consummation. In addition, the Bureau notes that creditors currently must provide tolerance cures within 30 days of settlement under Regulation X § 1024.7(i). Accordingly, a 60-day period after consummation may ease burden on creditors.

The final rule does not adopt different rules for curing intentional and unintentional violations. While TILA section 130(c) contains special liability provisions for unintentional violations, the Bureau does not believe it would be appropriate to condition tolerance cures based on whether a violation was intentional. The Bureau believes an objective, bright-line standard serves the interests of consumers, the supervisory activities of regulatory agencies, and industry compliance better than a timing standard that depends on a fact-intensive inquiry.

The final rule does not expressly limit a creditor's ability to correct errors to situations before a consumer has notified the creditor of the error. The Bureau has determined to follow the current Regulation X cure provision for increases beyond the limitations set forth in § 1026.19(e)(3), which does not contain the type of limitation requested by the commenter. As noted above, the Bureau is not seeking to alter the liability provisions under TILA.

For the aforementioned reasons, the final rule adopts a 60-day period for curing tolerance violations and providing revised disclosures. The final rule removes the proposed requirement that the disclosures be provided "as soon as reasonably practicable." Final § 1026.19(f)(2)(v) provides that, if amounts paid by the consumer exceed the amounts specified under § 1026.19((e)(3)(i) or (ii), the creditor complies with § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor complies with § 1026.19(f)(1)(i) if the creditor delivers or places in the mail corrected disclosures that reflect such refund no later than 60 days after consummation. The Bureau adopts comment 19(f)(2)(v)-1, revised to conform to the final rule. In addition, for clarity, the example in the comment has been modified to use the term "consummation" instead of "closing," and explains how the creditor in this example complies with § 1026.19(e)(1)(i) and (f)(1)(i) where a tolerance cure and corrected disclosures must be provided. The final rule and commentary use the term "corrected disclosures" rather than "revised disclosures" to reflect the terminology currently used with respect to the final TILA disclosures in Regulation Z and for greater consistency throughout § 1026.19(f). In addition, for consistency with other requirements under § 1026.19(f), the final rule requires the creditor to deliver or place in the mail the corrected Closing Disclosure.

Commenters asked whether settlement agents may cure tolerance violations. Under the final rule, although creditors are responsible for complying with the good faith tolerance requirements and are responsible for providing cures, *see* § 1026.19(e)(3), settlement agents may provide revised disclosures in accordance with § 1026.19(f)(1)(v).

Commenters asked how tolerance cures would be documented on revised disclosures, and some commenters requested that the final rule provide clarification on how refunds must be provided in the event that a creditor exceeds tolerances when a consumer finances closing costs. If the amounts paid by the consumer exceed the amounts specified under § 1026.19(e)(3)(i) or (e)(3)(ii), § 1026.19(f)(2)(v) requires the creditor to refund the excess to the consumer. Comment 19(f)(2)(v)-1 includes a cross-reference to comment 38(h)(3)-2, which provides guidance on disclosing refunds. With respect to providing refunds where closing costs are financed, as described by commenters, the Bureau does not believe it is practicable to provide guidance on the variety of situations in which refunds may be provided, particularly because consumers may have different preferences for how they wish to apply refunds.

A commenter asked that the final rule clarify that a person's non-compliance with the rule during the cure period would not constitute a violation. Final § 1026.19(f)(2)(v) provides that if amounts paid by the consumer exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor complies with § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor complies with paragraph § 1026.19(f)(1)(i) if the creditor delivers or places in the mail corrected disclosures that reflect such refund no later than 60 days after consummation. Thus, creditors do not violate § 1026.19(e) or (f) in connection with the refund changing the disclosures if they provide corrected disclosures in accordance with the timeframe in the final rule.

This final rule and commentary will enable meaningful disclosure of credit terms, prevent circumvention and evasion of TILA, and will facilitate compliance with TILA by enabling creditors to refund amounts collected in excess of the good faith requirements, consistent with TILA section 105(a). This also will result in the meaningful advance disclosure of settlement costs and the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by enabling creditors to refund amounts collected in excess of the good faith requirements, thereby furthering the meaningfulness and reliability of the estimated disclosures, consistent with section 19(a) of RESPA.

19(f)(3) Charges Disclosed

19(f)(3)(i) Actual Charge

Section 4 of RESPA provides that the settlement statement shall contain "all charges imposed upon the borrower" in connection with the settlement. 12 U.S.C. 2603(a). Regulation

X § 1024.8(b)(1) currently provides the general rule that the settlement agent shall state the actual charges paid by the borrower and seller on the RESPA settlement statement. The Bureau proposed § 1026.19(f)(3)(i), which would have provided that the amount imposed upon the consumer for any settlement service shall not exceed the amount actually received by the service provider for that service, except if the charge is an average charge, as provided under § 1026.19(f)(3)(ii). The Bureau proposed this provision pursuant to its authority under section 105(a) of TILA, section 19(a) of RESPA, Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

Proposed comment 19(f)(3)(i)-1 would have explained that § 1026.19(f)(3)(i) provides the general rule that the amount imposed upon the consumer for any settlement service shall not exceed the amount actually received by the service provider for that service. The comment would have explained further that, except as otherwise provided in § 1026.19(f)(3)(ii), a creditor violates § 1026.19(f)(3)(i) if the amount imposed upon the consumer exceeds the amount actually received by the service provider for that service.

The Bureau explained that the proposed rule would prevent circumvention and evasion of, and will facilitate compliance with, TILA by requiring disclosure of the actual terms and costs of the transaction, consistent with section 105(a) of TILA. The Bureau also explained that the proposed rule would implement the requirements of RESPA section 4, pursuant to the Bureau's implementation authority under RESPA section 19(a), which also would result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, consistent with RESPA sections 2(b) and 8. The Bureau explained that the proposed rule also would ensure that the features of the consumer's mortgage loan are fully and accurately disclosed to the consumer, consistent with Dodd-Frank Act section

1032(a). The Bureau further explained that the proposed rule would improve consumer awareness and understanding of transactions involving residential mortgage loans and is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

The Bureau received few comments on this aspect of the proposal. A trade association representing banks explained that the proposed rule appears to impose a zero tolerance on charges imposed on consumer, unless average charges are used. The commenter explained that, under Regulation Z § 1026.4(c)(7), certain third-party fees are excluded from the finance charge if they are "bona fide." The commenter explained that creditors have some protection against inadvertent mistakes because of the $100 finance charge tolerance under § 1026.18(d)(1). The commenter recommended that the final rule include a $100 tolerance, adjusted annually, for charges disclosed on the Closing Disclosure. One individual escrow agent requested that the Bureau clarify how settlement agents must balance their accounts if the amount of the title policy is not the actual premium. The Bureau has addressed questions with respect to specific disclosures in the applicable section-by-section analyses of § 1026.38.

The Bureau has considered the comment from the trade association and has determined to adopt the § 1026.19(f)(3)(i) and its associated commentary substantially as proposed, under the authority described in the proposal, with technical revisions to amend the reference to "service provided," and refers instead to "settlement service provider" for clarity. The final rule does not include a $100 tolerance for settlement charges that may be inaccurately disclosed. The charges disclosed on the Closing Disclosure are subject to the accuracy standards in § 1026.19(f)(1)(i). In addition, the final rule affords creditors more flexibility with respect to events occurring after consummation that make the previous disclosures inaccurate. In addition, as noted above, the Bureau does not intend to alter the existing provisions under TILA section 130 regarding the curing of errors by creditors.

19(f)(3)(ii) Average Charge

As part of HUD's 2008 RESPA Final Rule, HUD adopted a limited exception to the requirement that the settlement statement shall contain the amount imposed on the borrower, which shall not be more than the amount received by the settlement service provider. *See* 12 U.S.C. 2603(a), 2607(b). Under current Regulation X, a lender or settlement service provider may charge more for a settlement service than the amount paid for that service if the charge is an average charge. Specifically, Regulation X § 1024.8(b) provides that the average charge for a settlement service shall be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a particular class of transactions involving federally related mortgage loans, and that the total amounts paid by borrowers and sellers for a settlement service based on the use of an average charge may not exceed the total amounts paid to the providers of that service for the particular class of transactions.

Section 1024.8(b)(2) also provides that, the settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving federally related mortgage loans for a period of time as determined by the settlement service provider, but not less than 30 calendar days and not more than six months, a geographic area as determined by the settlement service provider, and a type of loan as determined by the settlement service provider. Regulation X also requires a settlement service provider to use an average charge in the same class of transactions for which the charge was calculated, and if the settlement service provider uses the average charge for any transaction in the class, then the settlement service provider must use the same average charge in every transaction within that class for which a RESPA GFE was provided. *Id.* Regulation X prohibits the use of an average charge for any settlement service if the charge for the service is based on the loan amount or property value, such as transfer taxes, interest charges, reserves or escrow, or any type of insurance, including mortgage insurance, title insurance, or hazard insurance, and also requires the settlement service provider to retain all documentation used to calculate the average charge for a particular class of transactions for at least three years after any settlement for which that average charge was used. *Id.*

Proposed § 1026.19(f)(3)(ii) would have provided that a creditor or settlement service provider may charge a consumer or seller the average charge for a settlement service if the average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions, the creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan, the creditor or settlement service provider uses the same average charge for every transaction within the defined class, and the creditor or settlement service provider does not use an average charge for any type of insurance, for any charge based on the loan amount or property value, or if doing so is otherwise prohibited by law. The Bureau proposed this provision pursuant to its authority under section 105(a) of TILA and 19(a) of RESPA.

Proposed comment 19(f)(3)(ii)-1 would have explained that average-charge pricing is the exception to the rule in § 1026.19(f)(3)(i) that consumers shall not pay more than the exact amount charged by a settlement service provider for the performance of that service. The comment would have clarified that, if the creditor develops representative samples of specific settlement costs for a particular class of transactions, the creditor may charge the average cost for that settlement service instead of the actual cost for such transactions, and that an average-charge program may not be used in a way that inflates the cost for settlement services overall.

Proposed comment 19(f)(3)(ii)-2 would have explained how an appropriate period of time, geographic area, and type of loan may be defined, and provided illustrative examples of issues a person may encounter when defining an appropriate geographic area and an appropriate type of loan. Proposed comment 19(f)(3)(ii)-3 would have provided further explanation related to the requirement that if a creditor chooses to use an average charge for a settlement service for a particular loan within a class, then the creditor must use that average charge for that service on all loans within the class. Proposed comment 19(f)(3)(ii)-3 also would have provided examples illustrating the uniform use requirement. Proposed comment 19(f)(3)(ii)-4 would have illustrated the requirement that the average charge must be calculated according to the average amount paid for a settlement service in a prior period, and clarifies that updates to the average charge may be delayed for an amount of time sufficient to re-calculate the average charge, provided that such delays are applied uniformly from one time period to the next.

Proposed comment 19(f)(3)(ii)-5 would have discussed the requirement that the total amount of average charges paid by consumers for settlement services may not exceed the total amount paid for those settlement services overall. The Bureau explained in the proposal that it has received extensive feedback from industry that this requirement, which currently exists under RESPA and Regulation X, has impeded industry adoption of average charge pricing. The Bureau stated its belief that prohibiting industry from collecting more money than is actually paid to settlement service providers means that industry cannot actually average costs over time, and must instead operate at a loss in the long term if industry chooses to use average charge pricing. The Bureau explained that it believed that the use of average-charge pricing promotes greater reliability for consumers. Therefore, the Bureau sought to address this concern to facilitate the adoption of average charge pricing. Proposed comment 19(f)(3)(ii)-5 would have addressed this issue and discussed the ways in which a person may comply with this requirement. The comment would have clarified that a person may refund the excess amounts collected or may factor in the excesses when determining the average charge for the next period. In addition, the comment would have clarified that a person also may comply by establishing a rolling monthly period of re-evaluation, and that a person complies by re-calculating the average amount every month, and will be deemed to be in compliance with sections 4 and 8 of RESPA if the person uses this method, even if the person collects more for settlement services than the total amount paid for those settlement services over time.

Proposed comment 19(f)(3)(ii)-6 would have explained that adjustments to the average charge based on prospective analysis are permitted if the creditor or settlement service provider develops a statistically accurate and reliable method for doing so. However, the Bureau explained in the proposal that it was concerned that prospective adjustments may not be practicable in the context of determining average charges. Accordingly, the Bureau sought comment on whether such a provision is appropriate.

Proposed comment 19(f)(3)(ii)-7 would have discussed the requirement that average charges may not be used for insurance premiums or for items that vary according to the loan amount or property value, such as transfer taxes. Proposed comment 19(f)(3)(ii)-8 would have clarified that an average charge may not be used where prohibited by any applicable State or local law. Proposed comment 19(f)(3)(ii)-9 would have explained how the recordkeeping requirements in § 1026.25 apply to the documents related to the calculation of average charge.

The Bureau proposed § 1026.19(f)(3)(ii) pursuant to its authority under section 105(a) of TILA and 19(a) of RESPA. HUD adopted average-charge pricing pursuant to its authority under section 19(a) of RESPA after finding that average-charge pricing would benefit consumers by lowering settlement costs and enabling more effective advance disclosure of such costs, consistent with RESPA sections 2(b), 4, 5, 8(c)(5), and 19(a).[248] In addition to this authority, the Bureau explained that proposed § 1026.19(f)(3)(ii) would prevent circumvention and evasion of, and will facilitate compliance with, TILA, consistent with section 105(a) of TILA. The Bureau further stated that the proposed regulation would improve consumer awareness and understanding of the transaction, which would be in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Comments

Trade associations representing banks were concerned that, if average cost pricing methodology cannot be used for small differences for different populations, they doubted whether it would be useful. Commenters were concerned that proposed comment 19(f)(3)(ii)-2 language appeared to require the creditor or settlement service provider to perform statistical analysis to determine what the median prices would be for a service, depending upon how the class was defined and whether there was a "normal distribution" of costs within a class. Commenters were concerned that the burden of conducting such analysis did not appear to have a reasonable relationship to any potential consumer benefit. Commenters also stated that, once a statistical analysis is complete, the proposed rule did not offer guidance on what level of difference in prices within a class would be acceptable.

Trade associations representing banks and financial companies explained that it was not clear under either the current or proposed rule when services are considered separate services,

[248] *See* 73 FR 14030, 14051-14052 (March 14, 2008). Section 8(c)(5) of RESPA provided that, "Nothing in this section shall be construed as prohibiting . . . such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Secretary." 12 U.S.C. 2607(c)(5) (2008).

such as whether different types of credit reports or different types of appraisals and valuations can be considered the same service. Commenters recommended that the creditor either be able to treat these as the same type of service or as different types of services. Commenters also requested guidance on how to the rule would apply when there are intermediate settlement service providers, such as when a creditor uses multiple appraisal management companies that, in turn, use many different appraisers, or when a creditor uses more than one title company, each of which uses many subproviders to provide title-related services.

Trade associations representing banks and financial companies asked, if an average charge is paid by the consumer but the settlement service provider received a different amount, whether the amount disclosed should be the actual amount paid to the service provider or the average amount charged to the consumer. Commenters observed that disclosing the actual amount paid to the provider would be a compliance burden and confusing to the consumer. They recommended that, where the consumer pays an average charge, the amount disclosed should be the average charge.

A trade association representing settlement agents supported the proposed rule's average charge pricing rules and explained that it found the detailed direction on the computation and use of an average charge helpful. The commenter requested that current Regulation X provisions on average charge pricing be supplanted by the TILA provisions of the proposed rule.

A title insurance company commenter supported the inclusion of proposed comment 19(f)(3)(ii)-6, which would have explained that a creditor may prospectively adjust average charges if it develops a statistically reliable and accurate method for doing so. The commenter explained that a prospective analysis adjustment procedure, based on a statistically accurate and reliable method, provides a way to charge an average charge that is more reflective of the actual cost incurred and is more equitable to consumers. The commenter provided an example in which, for winter-weather States, the charge for a survey obtained during the months of October through March may be 25 percent higher than the charge for a survey obtained during the months of April through September. The commenter was concerned that, if a prospective analysis was not permitted, consumers obtaining a survey during winter months would pay an average charge calculated retrospectively, and based on lower prices before winter. Similarly, if a prospective analysis was not permitted, consumers obtaining a survey during summer months would pay an average charge calculated retrospectively, and based on higher prices before the summer. The commenter was concerned that this would lead to inequitable outcomes for some consumers and would provide a disincentive to the creditor or settlement service provide to use the average charge methodology.

The title insurance company commenter also explained that a prospective adjustment methodology would be able to account for unusual situations where there is a known unilateral increase or decrease in the actual cost of a particular third-party settlement service. The commenter gave an example in which a new law was to take effect January 1 that would result in an across-the-board increase of $50 per transaction in recording fees. Without a prospective adjustment for this expected change, the $50 per transaction recording fee actual cost would have to be absorbed by the creditor or settlement agent for the initial time period of up to six months and would never be recovered. The commenter also explained that, conversely, if the law would result in an across-the-board decrease of $50 per transaction in recording fees, an inability to use a prospective adjustment methodology would result in a windfall to the creditor or settlement agent for the initial time period at the expense of the consumer.

The commenter did not believe prospective adjustments would be impracticable in the context of determining average charges if, as proposed, documentation would have to be provided to support all average charge determinations. Recordkeeping requirements would provide data for seasonal variations and would ensure average charges are not prospectively adjusted at will.

The commenter requested that the Bureau provide guidance on who will determine the average recording charges, noting that “alternative 1” to proposed § 1026.19(f) (in which the creditor would have been solely responsible for providing the Closing Disclosure) would raise questions about whether the creditor would be required to pay the actual recording charge to the settlement agent or if the settlement agent would establish the average charge for recording fees. The commenter was concerned that, if the Bureau selected “alternative 2” (in which responsibility for proposed § 1026.19(f) could be divided between settlement agents and creditors), it may be difficult for settlement agents to establish the average recording charges because they also would be the party paying the actual recording charge as necessary to record the documents. The commenter requested that the Bureau provide guidance on these situations.

Final Rule

The Bureau has considered the comments received regarding the proposed average charge pricing provisions. Some commenters were concerned that burdensome statistical analysis would be required to use average charge pricing under the final rule. The final rule does not require that creditors or settlement service providers engage in statistical analysis to determine whether the class of transactions that serves as the basis for the average charge is based on an appropriate geographic area and loan type.

The Bureau does not believe it will be unreasonably burdensome for creditors or settlement service providers to assess whether a geographic area or loan type are defined using subgroups that clearly have distinct cost characteristics. The average cost pricing rules are not requirements, but are intended to provide creditors flexibility from the general requirement that the actual amount imposed on the consumer may not exceed the amount received by the settlement service provider. To the extent an average charge is imposed that exceeds the cost actually received by a settlement service provider, the Bureau believes it is reasonable to expect creditors to ensure the average charge is not derived from distinct markets. Deriving an average charge from a class composed of subgroups that have distinct cost characteristics would mean that a charge could be unfairly inflated and applied in a way that disadvantages certain populations.

Creditors relying on such charges must ensure that classes of transactions are defined in a way that complies with § 1026.19(f)(3)(ii). While the Bureau does not expect that the average cost pricing rules will require the use of expensive statistical analysis, creditors relying on such charges likely will need to review the distribution of charges in a class of transactions to ensure averages are not derived from populations that have dissimilar cost characteristics.

Commenters requested that the rule clarify when settlement services are considered separate services or how the rule would apply to settlement services that involve intermediate settlement service providers. Final § 1026.19(f)(3)(i) and (ii) sets forth cost disclosure rules with respect to a "settlement service." RESPA section 3(3) defines "settlement services" as including "any service provided in connection with a real estate settlement"; the definition sets forth a number of examples. 12 U.S.C. 2603(3). Similarly, Regulation X defines "settlement service" broadly to mean "any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of" 15 classes of services, such as "[r]endering of credit reports and appraisals." Neither TILA nor Regulation Z includes its own definition of "settlement service." Because of the variety of settlement services and arrangements, the Bureau does not believe it is feasible to add additional specificity to that already provided by RESPA and Regulation X for purposes of the average cost pricing rules.

Creditors should exercise judgment in determining whether particular settlement services are distinct for purposes of calculating average charges, bearing in mind the requirement that an average charge should be no more than the average amount paid for a particular service by or on behalf of all consumers and sellers for a class of transactions. *See* § 1026.19(f)(3)(ii)(A). Creditors should also bear in mind that an average-charge program may not be used in a way that inflates the cost for settlement services overall. Thus, it would be inappropriate to derive an average charge for a settlement service comprised of sub-classes that have dissimilar cost characteristics because the nature of the service provided for each sub-class is clearly distinct. Similarly, where an average charge is applied to settlement services involving intermediary service providers, the appropriateness of an average charge would depend, among other things, on the nature of settlement service provided and how the provider charges for that service.

With respect to the comment recommending that the rule include a prospective adjustment methodology, the Bureau believes that a prospective adjustment methodology will facilitate compliance with the final rule. A prospective adjustment analysis can, in some cases, be a more efficient means of developing an average charge where certain cost increases are predictable using a statistically reliable and accurate method of adjustment. With respect to the comment requesting that the proposed average charge pricing regulations and commentary be included in Regulation X, such an amendment to Regulation X is outside the scope of this rulemaking.

For the aforementioned reasons and those discussed in the proposal, the Bureau has determined to finalize § 1026.19(f)(3)(ii) as proposed and comments 19(f)(3)(ii)-1 through -9 substantially as proposed. Minor modifications have been made to comments 19(f)(3)(ii)-2.i and -2.ii, which contain illustrative examples of how a creditor could define a geographic area and loan type. Comment 19(f)(3)(ii)-2.i clarifies that, where a geographic area is made up of sub-divisions, the geographic area would be "appropriately defined" if the sub-divisions had a relatively normal distribution of appraisal costs, even if the distribution "for each subdivision" ranges from below \$200 to above \$1,000. The final rule makes this modification to clarify further the meaning of the comment. A similar modification has been made to comment 19(f)(3)(ii)-2.ii.

In addition, comment 19(f)(3)(ii)-2 has been modified to explain that, for purposes of § 1026.19(f)(3)(ii)(B), a geographic area and loan type are appropriate if the sample size is sufficient "to calculate average costs with reasonable precision," provided that the area and loan type are not defined in a way that aggregates costs between dissimilar populations. This language has been added to clarify the meaning of "sufficient" in this context. The comment then gives examples of whether a geographic area and loan type have been defined appropriately. With respect to loan type, comment 19(f)(3)(ii)(B)-2.ii explains that it would not be appropriate to define a loan type that includes two distinct rate products that have different median recording fees, which would reflect dissimilar cost characteristics between the two products. The commentary explains that a loan type could be appropriately defined if both rate products had a "relatively normal distribution of recording fees," even if that distribution ranges between low and high amounts for both loan products. Comment 19(f)(3)(ii)-3.i and -3.ii include minor technical revisions.

Comment 19(f)(3)(ii)-9 has been revised to correct a reference to the document retention period required under § 1026.25. Proposed comment 19(f)(3)(ii)-9 had explained that, to comply with § 1026.25, a creditor must retain all documentation used to calculate the average charge for a particular class of transactions for at least two years after any settlement for which that average charge was used. In accordance with § 1026.25(c)(1), the comment clarifies that documentation must be retained for at least three years after any settlement for which the average charge was used.

Commenters requested clarification on whether, in a situation in which an average charge is paid by the consumer but where the settlement provider received a different amount, the amount disclosed should be the actual amount paid to the service provider or the average amount charged to the consumer. In this case, the charge disclosed would be the average charge, not the actual charge, pursuant to § 1026.19(f)(3)(i) and (ii). The Bureau believes this is consistent with RESPA and Regulation X, which require that the settlement statement disclose charges actually paid by the consumer.

A commenter requested clarification on how § 1026.19(f)(3)(ii) would apply to average charges for recording fees under either "alternative 1" or "alternative 2" with respect to the party responsible for providing the Closing Disclosure. As discussed in the section-by-section analysis of § 1026.19(f)(1)(v), the Bureau is finalizing "alternative 2," which would permit creditors and settlement agents to share responsibility for complying with § 1026.19(f). If a settlement agent assumes the responsibility for charging a consumer an average charge instead of an actual charge, it must comply with § 1026.19(f)(3)(ii). *See* comment 19(f)(1)(v)-2. Thus, the settlement agent would charge the consumer an average charge for recording fees in compliance with § 1026.19(f)(3)(ii), even if it pays different actual charges to record documents.

Final § 1026.19(f)(3)(ii) and comments 19(f)(3)(ii)-1 through -9 are adopted pursuant to the Bureau's authority under section 105(a) of TILA and 19(a) of RESPA. HUD adopted average-charge pricing pursuant to its authority under section 19(a) of RESPA after finding that average-charge pricing would benefit consumers by lowering settlement costs and enabling more effective advance disclosure of such costs, consistent with RESPA sections 2(b), 4, 5, 8(c)(5), and 19(a). The Bureau agrees with HUD's reliance on these authorities. In addition to these authorities, the Bureau believes the final rule and commentary will prevent circumvention and evasion of, and will facilitate compliance with, TILA, consistent with section 105(a) of TILA. The Bureau believes that the final rule and commentary will improve consumer awareness and understanding of the transaction, which will be in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

19(f)(4) Transactions Involving a Seller

Neither TILA nor Regulation Z contain requirements related to the seller in a purchase transaction. Section 4 of RESPA provides that the integrated disclosure shall conspicuously and clearly itemize "all charges imposed upon the seller" in connection with the settlement. 12 U.S.C. 2603(a). Regulation X states that the settlement agent shall provide a completed RESPA settlement statement to any seller at or before the settlement, unless the borrower waives the right to delivery of the RESPA settlement statement at or before settlement, in which case the RESPA settlement statement shall be mailed to the seller as soon as practicable after settlement. *See* 12 CFR 1024.10(b) and (c). Accordingly, the Bureau proposed § 1026.19(f)(4)(i), (ii), and (iii) pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

Proposed § 1026.19(f)(4)(i) would have provided that in a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the person conducting the settlement shall provide the seller with the disclosures in § 1026.38 that relate to the seller. Proposed § 1026.19(f)(4)(ii) would have provided that the person conducting the settlement shall provide these disclosures no later than the day of consummation. Under the proposed provision, if an event occurs after consummation that causes such disclosures to become inaccurate, and such inaccuracy results solely from payments to a government entity, the person conducting the real estate closing shall deliver revised disclosures to the seller no later than 30 days after consummation. Proposed § 1026.19(f)(4)(iii) would have provided that the amount imposed upon the seller for any settlement service shall not exceed the amount actually received by the service provider for that service, except for average charges calculated pursuant to § 1026.19(f)(3)(ii).

Proposed comment 19(f)(4)(ii)-1 would have explained that, if an event occurs after consummation that causes such disclosures to become inaccurate and such inaccuracy results solely from payments to a government entity, the person conducting the real estate closing shall deliver revised disclosures to the seller no later than 30 days after consummation. Proposed § 1026.19(f)(4)(i) would have required disclosure of the items that relate to the seller's transaction. Thus, the comment would have explained that the person conducting the real estate closing need only provide revised disclosures if an item related to the seller's transaction becomes inaccurate and such inaccuracy results solely from payments to a government entity. The proposed comment also would have provided illustrative examples of this requirement.

Comments

Commenters expressed mixed views with respect to the requirement to provide a separate seller's form. Some industry commenters noted that a separate seller's form would benefit the consumer and the seller because it would protect the privacy interests of both parties, as well as others. For example, one settlement agent noted that the parties' real estate agents frequently do not want their commissions to be disclosed publicly as part of the transaction. Some commenters also noted that separate forms would facilitate closings because last-minute changes that affect only one party could be accounted for separately. Other industry commenters were concerned that separate disclosures could create confusion and increase burden for creditors and settlement service providers, and potentially raise costs for sellers. A number of these commenters were concerned that a separate disclosure form for the seller would have been required under the proposal, which they believed would be unnecessarily burdensome and complicate closings. Settlement agent and law firm commenters also explained that a separate seller's form would not be in the buyer's or seller's interest because many transactions require a reference to the other party's side of the RESPA settlement statement (for example, to see where seller-paid closing costs are applied).

In addition, many commenters were concerned that a creditor may be responsible for the seller's transaction. They stated that it would not be in the seller's interest for the consumer's creditor to control all aspects of the funding, that creditors owe no duty to the seller, and that creditors lack expertise to complete information about the seller's transaction. A community bank stated that creditors should not have to complete the seller's disclosure, even if the closing is taking place at the creditor's offices; instead, the real estate agent or title company should prepare the form. Real estate agents stated that it would not be appropriate for the buyer's lender to contact the seller's lender for payoff information, and that this information should be obtained by the title company because such information would pose a conflict-of-interest for the creditor. One real estate agent commenter suggested that this would mean a seller would lack representation at the closing table and would need to hire a separate attorney, increasing closing costs.

One settlement agent commenter asked whether the seller should be afforded the same opportunity as the consumer to review the settlement figures three business days prior to closing. However, a community bank explained that, although it should not be a problem to provide the borrower the final closing costs three days in advance, most title companies are not able to provide the seller's figures until the day before closing at the earliest. The commenter noted that third-party lenders do not calculate the seller's payoff statement until right before closing and sometimes attorney fees are not provided timely. A trade association representing various mortgage industry professionals requested that the Bureau design separate disclosure forms to avoid consumers receiving a Closing Disclosure that combines seller and consumer information. Commenters also asked how settlement performed by the creditor would be documented by the settlement agent for the seller if the creditor delivers the Closing Disclosure.

Trade associations representing banks and financial companies stated that proposed § 1026.19(f)(4)(i) appeared inconsistent with proposed § 1026.19(f)(2)(i). The commenters observed that, while § 1026.19(f)(4)(i) would have provided that "the person conducting the real estate closing shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction," proposed § 1026.19(f)(2)(i) would have provided that, if there were changes to the transaction, "the creditor shall deliver revised disclosures reflecting such changes at or before consummation."

A variety of settlement agents and trade associations representing settlement agents and banks requested clarification on how a seller's settlement agent would document settlements when the creditor provides the Closing Disclosure, and which document would serve as the ultimate disbursement document.

Final Rule

The Bureau has considered the comments on the proposed provisions regarding disclosure to the seller. The Bureau has determined to finalize the regulation and commentary substantially as proposed, with modifications described below. The Bureau understands commenters' concerns about the inconsistent usage of the terms "settlement agent" and "the person conducting the real estate closing" between § 1026.19(f)(4) and the other provisions of § 1026.19(f). The final rule revises proposed § 1026.19(f)(4)(i) and (ii) to change the term "person conducting the real estate closing" to the term "settlement agent" to conform to the usage of that term throughout § 1026.19(f). The Bureau believes this modification will facilitate compliance.

As set forth in § 1026.38, the final rule requires certain information about the seller's transaction because such information is necessary to comply with TILA section 128(a)(17), which requires that the creditor disclose the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. The Bureau believes this requires disclosure of information about the seller's transaction. In addition RESPA section 4(a) requires that the RESPA settlement statement itemize all charges imposed upon the seller in connection with the settlement.

As discussed in more detail in the section-by-section analysis of 1026.19(f)(1)(v), creditors are permitted to divide responsibility for providing the Closing Disclosure with settlement agents, and the Bureau expects creditors will do so if they believe they cannot accurately or effectively make certain disclosures. The Bureau proposed a separate requirement under § 1026.19(f)(4)(i) for the person conducting the settlement to provide the disclosures in

§ 1026.38 that relate to the seller's transaction to the seller because the Bureau recognizes that a creditor does not owe a duty to the seller and to account for variations in local law that may require that the seller receive a separate disclosure (*e.g.*, for privacy reasons) or variations in local practice in which a seller and a consumer may not attend settlements in-person or at the same time. This requirement is intended to implement in Regulation Z the RESPA requirement that currently appears in Regulation X. *See* 12 CFR 1024.10(b). To the extent the seller's disclosure contains the same information as the Closing Disclosure, the Bureau does not believe substantial new burden will be created because information from the Closing Disclosure, or the Closing Disclosure itself, could be used. To avoid confusion over whether a separate seller's disclosure must be provided, the Bureau has clarified proposed comment 19(f)(4)(i)-1 to indicate that the settlement agent complies with § 1026.19(f)(4)(i) by providing a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or alternatively providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable. See the section-by-section analyses of § 1026.38(t)(5)(v) and (vi) for more discussion of the separate forms that are permitted for transactions involving a seller.

Some commenters were concerned that sellers would be reluctant to provide information to a creditor that may appear on the Closing Disclosure and one commenter explained that creditors should not have to complete the seller's disclosure, even if the closing is taking place at the creditor's offices. Final § 1026.19(f)(4)(i) provides that the settlement agent provides the seller's disclosure, which in most cases will not be the creditor.

With respect to concerns about sellers being reluctant to share their information, the Bureau believes final § 1026.19(f)(1)(v) will allow creditors and settlement agents to manage any conflicts as they arise. The Bureau also observes that Regulation X § 1024.10(b) currently requires, when the borrower's and seller's copies of the RESPA settlement statement differ, that the settlement agent deliver copies of both the borrower's and seller's copies of the RESPA settlement statement to the lender (if the lender is not the settlement agent). Some comments requested that the Bureau develop a separate forms, such as for refinancings, to avoid consumers receiving a Closing Disclosure that combines seller and consumer information. This is permitted pursuant to § 1026.38(t)(5). As discussed in the section-by-section analysis of that provision below, this provision provides for a separate form for the seller and consumer, a different version for transactions without a seller, and a different version only for the seller.

One commenter asked whether the seller should be afforded the same opportunity as the consumer to review the settlement figures three business days prior to closing. The final rule does not require that the seller receive the Closing Disclosure three business days before consummation, but the final rule does not prevent settlement agents from providing the Closing Disclosure to the seller earlier. As noted above, neither TILA nor Regulation Z contain requirements related to the seller in a purchase transaction. Regulation X generally requires that the settlement agent provide a completed RESPA settlement statement to any seller at or before the settlement. In the context of a credit transaction covered by TILA, consumers are considering the terms of a loan obligation in addition to settlement costs in connection with a purchase-money mortgage transaction. As discussed in the section-by-section analyses of § 1026.19(f)(1)(ii)(A), (f)(2)(i), and (f)(2)(ii), the Bureau believes a three-business-day period for consumers would be necessary to comply with the requirements of MDIA and to provide consumers sufficient time to consider major changes to the terms of a loan that could impose significant, long-term costs on consumers.

With respect to commenters' questions about use of the Closing Disclosure as a disbursement document, as explained also in the section-by-section analysis of § 1026.19(f)(1)(v), the Closing Disclosure is designed to integrate disclosures provided under TILA and RESPA. To the extent the Closing Disclosure's disclosure requirements differ from other arrangements made pursuant to contract or other law or custom, the final rule does not prohibit creditors and settlement agents from developing their own disbursement instructions and managing any discrepancies as they arise, consistent with the current practice with respect to the RESPA settlement statement.

Final provisions. For the aforementioned reasons, including those cited in the proposal, § 1026.19(f)(4)(i) and (ii) and comments 19(f)(4)(i)-1 and 19(f)(4)(ii)-1 are adopted substantially as proposed, with modifications discussed below. Final § 1026.19(f)(4)(iii) is adopted without change.

Final § 1026.19(f)(4)(i) and (ii) and the associated commentary use the term "settlement agent" instead of "person conducting the settlement" to conform to the usage of the term throughout § 1026.19(f). Final § 1026.19(f)(4)(i) also requires that the settlement agent provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction "reflecting the actual terms of the seller's transaction." The final rule includes this language to conform § 1026.19(f)(4)(i) to the requirement in § 1026.19(f)(1)(i) and to reflect the standard currently in Regulation X for the settlement agent to state the actual charges paid by the borrower and seller on the RESPA settlement statement. *See* 12 CFR 1024.8(b)(1).

The final rule includes comment 19(f)(4)(i)-1, which clarifies how the settlement agent complies with § 1026.19(f)(4)(i) to provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction. Specifically, comment 19(f)(4)(i)-1 explains that the settlement agent complies with § 1026.19(f)(4)(i) by providing a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or alternatively providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable. See the section-by-section analyses of § 1026.38(t)(5)(v) and (vi) for further discussion regarding the final rule with respect to the disclosures required under § 1026.38 in transactions involving a seller.

In addition, final § 1026.19(f)(4)(ii) amends the proposal to require that the settlement agent provide the seller's disclosures reflecting the actual terms of the transaction on the day of consummation. Regulation X generally requires that the settlement agent deliver the RESPA settlement statement to the seller at or before settlement. *See* 12 CFR 1024.10(b). As discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), the Bureau recognizes that "consummation" may not necessarily be the final "settlement" of the transaction. Final § 1026.19(f)(4)(ii) addresses changes that may occur after consummation.

Final § 1026.19(f)(4)(ii) and comment 19(f)(4)(ii)-1 also have been modified with respect to post-consummation changes to harmonize this provision with the requirements in final § 1026.19(f)(2)(iii) with respect to the circumstances requiring redisclosure and the timing for such redisclosures. Comment 19(f)(4)(ii)-1 includes a cross-reference to comment 19(e)(4)(1)-1 for additional guidance on complying with the timing requirement for post-consummation disclosures. Comment 19(f)(4)(ii)-1 includes an illustrative example, modified to conform to the final rule and includes a cross-reference to comment 19(f)(2)(iii)-1.iii for an additional example in which corrected disclosures must be provided to the seller.

The final rule includes § 1026.19(f)(4)(iv) to implement the requirement currently in Regulation X § 1024.10(b). The Regulation X provision generally provides that, when the borrower's and the seller's copies of the RESPA settlement statement differ, both copies shall be provided to the lender (if the lender is not the settlement agent). The Bureau believes it is important to integrate this requirement in § 1026.19(f) because § 1026.25(c)(1)(ii) generally requires creditors to retain copies of the disclosures under § 1026.19(f)(1)(i) and (f)(4)(i). Accordingly, final § 1026.19(f)(4)(iv) provides that, when the consumer's and seller's disclosures under § 1026.19(f) are provided on separate documents, as permitted under § 1026.38(t)(5), the settlement agent shall provide to the creditor (if the creditor is not the settlement agent) a copy of the disclosures provided to the seller under § 1026.19(f)(4)(i).

The Bureau believes the final rule and commentary will prevent circumvention and evasion of, and will facilitate compliance with, TILA, consistent with section 105(a) of TILA. The final rule and commentary implement the requirements of RESPA section 4, pursuant to the Bureau's implementation authority under RESPA section 19(a). The Bureau believes the final rule and commentary also will result in the meaningful advance disclosure of settlement costs and the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by ensuring that the terms of the transaction that relate to the seller, which include amounts owed to the seller, are fully and accurately disclosed to the seller, consistent with RESPA sections 8 and 19(a). The Bureau believes that receipt of the integrated disclosures in accordance with the final rule and commentary also will ensure that the features of the transaction and settlement services will be more fully and accurately disclosed to the consumer in a manner that permits sellers to understand the costs of the transaction, consistent with Dodd-Frank Act section 1032(a). The Bureau also believes that, by requiring sellers to receive the integrated disclosure, the final rule and commentary also will improve the seller's awareness and understanding of the seller's transaction, which involves a residential mortgage loan, which is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

19(f)(5) No Fee

Although TILA does not address fees related to the preparation of disclosures, RESPA provides that no fee may be imposed on any person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by such lender for the preparation or delivery of the settlement statement required by section 4 of RESPA or for statements required by TILA. *See* 12 U.S.C. 2610. Regulation X § 1024.12 implements RESPA's requirement. Neither TILA nor Regulation Z contains a similar requirement. The Bureau proposed § 1026.19(f)(5), which would have provided that no fee may be imposed on any person, as a part of settlement costs or otherwise, by a creditor or by a servicer for the preparation or delivery of the disclosures required under § 1026.19(f)(1)(i), escrow account statements required pursuant to section 10 of RESPA, or other statements required by TILA. The Bureau proposed this provision under TILA section 105(a) and RESPA sections 10 and 19(a). The Bureau explained that the proposed provision would strengthen the informed use of credit by ensuring that consumers are not informed that consumers must pay fees prohibited by law, and enhance competition by ensuring that creditors do not attempt to gain a competitive advantage by charging prohibited fees, both of which are consistent with section 105(a) of TILA. The Bureau also stated its belief that the proposal would result in the meaningful advance disclosure of settlement costs and the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by ensuring that illegal fees are not included on the disclosures, consistent with section 19(a) of RESPA.

The Bureau received no comments on this proposed provision. For the reasons stated in the proposal and based on the authority stated in the proposal, the final § 1026.19(f)(5) is adopted with modifications from the proposal. For organizational purposes, the final rule limits the scope of the prohibition on charging fees for the preparation or delivery of the Closing Disclosure only. The full prohibition under Regulation X § 1024.12 remains in effect.

19(g) Special Information Booklet at Time of Application

Regulation X § 1024.6 contains the provisions related to the special information booklet, which is required by section 5 of RESPA. *See* 12 U.S.C. 2604. The Bureau proposed § 1026.19(g), which is substantially similar to the existing requirements in Regulation X, but modified to conform to the usage associated with TILA. The Bureau proposed this provision pursuant to its authority under TILA section 105(a) and RESPA section 19(a). The Bureau also solicited feedback on whether the Consumer Handbook on Adjustable-Rate Mortgages (CHARM) booklet, required under § 1026.19(b)(1), should be incorporated into the special information booklet.

Proposed comment 19(g)(1)-1 would have provided that the Bureau may, after publishing a notice in the *Federal Register*, issue a revised or separate special information booklet that addresses transactions subject to § 1026.19(g). The comment would have further clarified that the Bureau also may choose to permit the forms or booklets of other Federal agencies to be used by creditors, in which case the availability of the booklet or alternate materials for these transactions will be set forth in a notice in the *Federal Register*.

Proposed comment 19(g)(1)-2 would have clarified that, when two or more persons apply together for a loan, the creditor complies with § 1026.19(g) if the creditor provides a copy of the booklet to one of the persons applying. Proposed comment 19(g)(2)-1 would have explained that the special information booklet may be reproduced in any form, provided that no changes are made, except as otherwise provided under § 1026.19(g), and that provision of the special information booklet as a part of a larger document does not satisfy the requirements of § 1026.19(g). Comment 19(g)(2)-1 would have further clarified that any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible. The Bureau explained that proposed § 1026.19(g) was consistent with TILA's purposes in that it would increase consumer awareness of the costs of the transaction by informing consumers that settlement costs can be influenced by shopping, thereby promoting the informed use of credit. The Bureau further explained that the provision would enhance consumers' ability to shop for a mortgage loan, which will effect changes in the settlement process that will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, consistent with the Bureau's authority under section 19(a) of RESPA. Proposed comment 19(g)(2)-2 would have clarified that the special information booklet may be translated into languages other than English.

The Dodd-Frank Act amended RESPA section 5 to require that the booklet include, among other things, information about the trade-off between closing costs and interest rates over the life of the loan. *See* Dodd-Frank Act section 1450(2), amending section 5(b) of RESPA; 12 U.S.C. 2604(b)(1)(D).

At the time the Bureau was receiving public comments on this proposal, the Bureau also was considering the 2012 Loan Originator Proposal. In the 2012 Loan Originator Proposal, the Bureau proposed to use its exemption authority under the Dodd-Frank Act to allow creditors and loan originator organizations to continue making available loans with consumer-paid upfront points or fees. As noted in the discussion of comments in the section-by-section analysis of § 1026.19(e)(2)(ii) above, the 2012 Loan Originator Proposal generally would have required creditors to make a zero-zero alternative loan available to consumers before imposing upfront points or fees in a closed-end mortgage transaction.[249] The Bureau in that proposal solicited comments on variations and alternatives to this approach.

Comments

Commenters had several suggestions for some of the RESPA-required content for the special information booklet. In response to the 2012 Loan Originator Proposal, commenters explained that educating consumers generally about the relationship between interest rates and other costs would be preferable to a requirement that loan originators offer consumers particular terms. In addition, commenters stated that a mandated presentation of a zero-zero alternative may cause borrowers to believe that such an alternative is best in all cases, where in fact, the benefit to a borrower depends on many factors (including how long the consumer plans to remain in the mortgage, particularly as interest rates rise). Trade associations representing banks recommended that the special information booklet demonstrate hypothetical trade-offs to assist consumers in selecting loan options, similar to the current RESPA GFE. One trade association representing banks also emphasized that the Bureau should include generic information about the trade-off between a loan's interest rate and its points and fees. The commenter explained that many consumers shop based on rate and points and the commenter stated that it believed more would if they were advised accordingly. The commenter further explained that increased consumer interest in such shopping will drive the market to provide even more than the many rate and point choices available today, alleviating the need for mandated options. A commenter also explained that the booklet offers the opportunity and right platform to test various approaches to informing borrowers of available options.

[249] In the 2013 Loan Originator Final Rule, the Bureau adopted a complete exemption to the statutory ban on upfront points and fees set forth in TILA section 129B(c)(2)(B)(ii). *See* 78 FR 11279, 11370 (Feb. 15, 2013).

With respect to combining the CHARM booklet with the special information booklet, a trade association representing settlement agents did not object to including the CHARM booklet with other materials. A trade association representing banks noted there were advantages and drawbacks to including the CHARM materials with the special information booklet. Among the advantages were that it would serve a growing market as ARM loans may become more popular as interest rates rise. Among the drawbacks were that the CHARM booklet is 36 pages long and would be very large compared to the booklet. The commenter believed it was important, in any event, that the CHARM materials be made accessible and easily understandable for consumers by the Bureau. A non-depository lender stated that the CHARM and special information booklets should remain separate. The commenter explained that CHARM booklet is directed to consumers who have applied for an ARM, and that it would be ill-suited to consumers who apply for a fixed rate loan. Credit union commenters supported consolidating the CHARM booklet with the special information booklet. One credit union commenter explained doing so would streamline the number of documents received by borrowers at the time of application without any detrimental effect to the borrower. The credit union commenter also explained that the combined document contains all of the information that a borrower would find useful in the application process while reducing information overload. Another credit union commenter explained that combining the CHARM booklet with the special information booklet would reduce information overload and would help consumers better understand the application process. A software company commenter requested clarification on whether two versions of the special information booklet will need to be made—one for ARMs and one for all others.

A professional association representing attorneys recommended that the special information booklet could be used to reduce the length and complexity of the integrated disclosures by containing information about the transaction that does not relate to the exchange of funds.

A non-depository lender supported proposed comment 19(g)(1)-2, clarifying that when two or more persons apply together for a mortgage loan, lenders are in compliance with the rule by providing a copy of the booklet to one of the persons applying. Trade associations representing banks and a non-depository lender commenter requested that the Bureau put high priority on developing web-based information that is linked to the forms as well as the booklet. Commenters explained that internet links would efficiently explain the forms to borrowers, and internet-based information and accompanying hard copy key or glossary materials could alleviate the need for explanatory information in the forms, making the forms shorter and more inviting to consumers. A trade association representing banks recommended that the Bureau include an interactive, online version made available to consumers and housing counselors.

A software company commenter requested clarification on whether the booklet would be required to be provided on 8.5 x 11 paper as a separate disclosure. The commenter also requested clarification on whether the graphic on the cover can be removed.

A trade association representing banks explained that the special information booklet and any accompanying web-based information accompanying the disclosures were as important as the forms themselves. The commenter explained that these materials should be proposed along with the tested and revised loan forms for comment by stakeholders. One non-depository lender requested that the Bureau seek public input when developing the booklet because it would provide almost as much information as the disclosures themselves. A trade association representing settlement agents reiterated its support for a public process in developing the special information booklet.

Final Rule

The final rule adopts § 1026.19(g) substantially as proposed and adopts commentary to that section substantially as proposed, along with other modifications discussed below. The Bureau views the special information booklet as part of the Bureau's broader mission to educate consumers about consumer financial products, and the Bureau intends to develop the special information booklet together with other educational materials that will be accessible on its public website. The Bureau also plans to update the booklet in the future to reflect the integrated disclosures adopted in this final rule, the amendments to section 5 of RESPA in section 1450 of the Dodd-Frank Act, and other Bureau rulemakings.

Creditor to provide the special information booklet under § 1026.19(g)(1). To define the term "special information booklet," final § 1026.19(g)(1) includes clarifying language referring to the special information booklet required pursuant to section 5 of RESPA (12 U.S.C. 2604) to help consumers applying for federally related mortgage loans understand the nature and cost of real estate settlement services.

The final rule clarifies proposed § 1026.19(g)(1)(i) by omitting language that would have referred to the consumer's application "for credit." The application under § 1026.19(g)(1) has the same meaning as the application under § 1026.2(a)(3)(ii). *See* the section-by-section analysis of § 1026.2. The final rule refers only to the consumer's "application." To facilitate compliance, the final rule includes comment 19(g)(1)-3 to explain that "application" is defined in § 1026.2(a)(3)(ii). The comment also clarifies that the creditor need not provide the booklet under § 1026.19(g)(1)(i) when it denies an application or if the consumer withdraws the application before the end of the three-business-day period. The comment also includes a cross-reference to comment 19(e)(1)(iii)-3 for additional guidance on denied or withdrawn applications.

The final rule makes other amendments to the provisions in proposed § 1026.19(g)(1)(i) to clarify the timing requirements applicable to § 1026.19(g). Proposed § 1026.19(g)(1)(i) would have stated that the creditor must deliver the special information booklet "not later than three business days after the application is received," and that the creditor need not provide the booklet if the creditor denies the consumer's application before the end of the "three-day period." To set forth the timing requirements of § 1026.19(g) more clearly, the final rule provides that the creditor shall deliver or place in the mail the booklet not later than three business days after the "consumer's application" is received, and that the creditor need not provide the booklet if the creditor denies the consumer's application before the end of the "three-business-day period."

The final rule also revises § 1026.19(g)(1)(i) to state that the creditor shall deliver or place in the mail the special information booklet, to conform to the language of § 1026.19(e) and (f), as well as RESPA section 5(d), which states that the booklet "shall be provided by delivering it or placing it in the mail."

In addition, comment 19(g)(1)-1 revises proposed comment 19(g)(1)-1 to describe more clearly how the Bureau will issue revised or separate special information booklets. Specifically, comment 19(g)(1)-1 states that the Bureau may, "from time to time," issue revised or "alternative versions" of the special information booklet that addresses transactions subject to § 1026.19(g). Proposed comment 19(g)(1)-1 would have stated that the Bureau may issue a revised or "separate" special information booklet that addresses transactions subject to § 1026.19(g).

Comment 19(g)(1)-1 includes these revisions because the Bureau believes the reference in proposed comment 19(g)(1)-1 to a "separate" booklet does not reflect the Bureau's interpretation of its authority under RESPA section 5 to issue alternate booklets that reflect different product types. As discussed above, commenters made a number of suggestions for revising the special information booklet or combining it with the CHARM booklet applicable to adjustable rate mortgage loans. Also as noted above, Dodd-Frank Act section 1450 amended RESPA section 5 to require that the special information booklet include additional content. Some of this content may be more relevant to some products than others. And while § 1026.19(g)(1)(iii) currently limits the scope of coverage of the special information booklet to first-lien, purchase-money consumer credit transactions secured by real property, the Bureau plans to review the scope of § 1026.19(g) as it develops integrated disclosure requirements for other loans in future rulemakings.

The Bureau expects to publish revisions to the special information booklet in the future, for example, to conform the booklet's content to changes resulting from the Bureau's Title XIV Rulemakings. The Bureau also expects to publish revisions to implement the Dodd-Frank Act's amendments to RESPA section 5 and will take into account comments received in response to the proposal and other feedback received from interested parties in its design. *See* Dodd-Frank Act section 1450(2), amending section 5(b) of RESPA; 12 U.S.C. 2604(b)(1)(D). For example, the Bureau may determine that alternative versions of the booklet for particular product types may aid consumer understanding by providing consumers with information most relevant to their situation. Finally, the Bureau believes comment 19(g)(1)-1 is consistent with the current definition of "special information booklet" in Regulation X § 1024.2, which currently provides that "[t]he Bureau may issue or approve additional booklets or alternative booklets by publication of a Notice in the *Federal Register*."

Comment 19(g)(1)-1 also differs from proposed comment 19(g)(1)-1 in terms of when a revised or alternative version of the booklet may be issued. Under the comment, such a booklet may be issued "by" publishing a notice in the *Federal Register*. The proposed comment would have stated that the Bureau may issue a revised or separate booklet "after" publishing a notice in the *Federal Register*. The Bureau believes that the comment is clearer than the proposed commentary, which could have implied that an additional step was necessary to issue the booklet after publication of the *Federal Register* notice. In addition to these modifications, comment 19(g)(1)-1 includes a clarifying revision that the Bureau also may choose to permit the forms or booklets of other Federal agencies "to be used by creditors."

The final rule reorganizes § 1026.19(g)(1)(iii) to clarify the types of transactions for which the booklet is not required to be provided. Proposed § 1026.19(g)(1)(iii) would have provided that the creditor or mortgage broker need not provide the booklet to the consumer for transactions identified in § 1026.19(g)(1)(iii)(A) through (C), as well as those identified in § 1026.19(g)(1)(iii)(D), which would have listed "[a]ny other consumer credit transaction secured by real property whose purpose is not the purchase of a one-to-four family residential property." The transactions under proposed § 1026.19(g)(1)(iii)(D) would have been inclusive of the transactions under § 1026.19(g)(1)(iii)(A) through (C). Accordingly, the final rule moves the reference to the class of transactions that would have been identified in proposed § 1026.19(g)(1)(iii)(D) to the more general provision in § 1026.19(g)(1)(iii), and retains the classes of transactions identified in § 1026.19(g)(1)(iii)(A) through (C) as examples. As revised, under final § 1026.19(g)(1)(iii), the creditor or mortgage broker need not provide the booklet to the consumer for a consumer credit transaction secured by real property, the purpose of which is not the purchase of a one-to-four family residential property, including, but not limited to, the transactions identified in the proposal (*i.e.*, refinancing transactions, closed-end loans secured by a subordinate lien, and reverse mortgages).

In addition, the final rule revises proposed § 1026.19(g)(1)(iii)(B), which would have referred to "[c]losed-end loans when the lender takes a subordinate lien," to refer instead to "[c]losed-end loans secured by a subordinate lien." The final rule includes this change to clarify that the booklet is not required to be provided when the creditor is extending only a closed-end loan secured by a subordinate lien. However, the booklet would be required to be provided when the creditor is extending a closed-end first-lien consumer credit transaction secured by real property for the purpose of purchasing a one-to-four family residential property, even if the creditor also is extending a closed-end subordinate-lien loan contemporaneously. The creditor would not be required under § 1026.19(g)(i)(iii)(B) to provide a second booklet for the subordinate-lien loan.

Permissible changes under § 1026.19(g)(2). The final rule revises proposed § 1026.19(g)(2) to provide clearer language with respect to permissible changes to the booklet. In addition, comment 19(g)(2)-1 includes a technical revision to the first sentence of the comment to refer more specifically to § 1026.19(g)(2) and includes a cross-reference to comment 19(g)(2)-3, which is discussed in more detail below. A minor revision has been made to improve the language in final § 1026.19(g)(2)(ii), and final § 1026.19(g)(2)(iv) includes a technical revision to replace a reference to "the lender" with a reference to "the creditor," to conform to the terminology of Regulation Z. Comment 19(g)(2)-2 corrects a typographical error in the last sentence of the proposed comment and includes a reference to comment 19(g)(2)-3, discussed below.

In addition, the final rule amends proposed § 1026.19(g)(2)(iv) to provide that the cover of the booklet may be in any form and may contain any drawings, pictures or artwork, "provided that the title appearing on the cover shall not be changed." As discussed below, this change has been made because the Bureau believes that future revised or alternative versions of the booklet will be more effective for consumers if creditors are not permitted to change the title. Proposed § 1026.19(g)(2)(iv) would have provided that "[t]he cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the words 'settlement costs' are used in the title." This language would have reflected the current requirement under Regulation X § 1024.6(d)(2) applicable to the version of the booklet presently used by lenders. As noted above, the Bureau plans to update the special information booklet consistent with the amendments to section 5 of RESPA in section 1450 of the Dodd-Frank Act and to reflect the integrated disclosures. And as discussed above with respect to comment 19(g)(1)-1, the Bureau intends to issue a revised version, and possibly alternative versions of the special information booklet that implement the expanded content requirements of RESPA section 5 and the integrated disclosure requirements of § 1026.19(e) and (f). Because the amendments to RESPA section 5 include new content beyond settlement cost information, the Bureau expects future revised or alternative versions of the booklet will address topics in addition to settlement costs. Similarly, the Bureau expects the title of the revised or alternative versions of the booklet will refer to topics other than settlement costs.

The Bureau is concerned that, without this modification, the restriction on the permissible changes to the title (*i.e.*, the title must include the words "settlement costs") will become obsolete and may prove too narrow once the Bureau issues an updated version of the special information booklet covering a broader range of topics. Although updates to the booklet are still under consideration by the Bureau, the Bureau believes the final rule must address future versions of the booklet so that the booklet's title accurately conveys to consumers the full range of content. Accordingly, the final rule amends § 1026.19(g)(2)(iv) to state expressly that creditors may not change the title of the booklet.

At the same time, the Bureau recognizes creditors should be permitted to continue to provide booklets already in use until the Bureau issues an update to address topics in addition to settlement costs. Accordingly, the final rule includes comment 19(g)(2)-3, which refers to the general restriction on changing the booklet's title under § 1026.19(g)(2)(iv) and comment 19(g)(1)-1, and explains that, until the Bureau issues a version of the special information booklet relating to the Loan Estimate and Closing Disclosure under §§ 1026.37 and 1026.38, for applications that are received on or after August 1, 2015, a creditor may change the title appearing on the cover of the version of the special information booklet in use before August 1, 2015, provided the words "settlement costs" are used in the title.

The final rule includes this comment to facilitate compliance for creditors using the current version of the special information booklet that does not address the integrated disclosure requirements of § 1026.19(e) or (f) until the Bureau issues an updated version for applications subject to the integrated disclosure requirements. In the event that the Bureau does not issue a revised or alternative version of the booklet that addresses the integrated disclosure requirements by the effective date of this final rule (August 1, 2015), the Bureau believes creditors should be permitted to rely on booklets they may have already modified in accordance with current Regulation X § 1024.6(d), including any permissible modifications creditors have made to the title. The Bureau believes this commentary is appropriate because a rule that restricts a creditor's ability to change the title of the current version of the booklet may impose unnecessary compliance burden on creditors without material consumer benefit. To provide creditors with guidance on compliance with the effective date of the final rule, comment 19(g)(2)-3 also contains a cross-reference to comment 1(d)(5)-1.

Clarifications. A commenter requested clarification on whether the graphic on the cover can be removed and whether the booklet would be required to be provided on 8.5 x 11 paper as a separate disclosure. Final § 1026.19(g)(2) permits certain changes to the booklet, including changes to the graphics on the cover. Final § 1026.19(g)(2)(iv) provides that the cover of the booklet may be in any form and may contain any drawings, pictures, or artwork, provided the words “settlement costs” are used in the title. The booklet is not required to be provided on 8.5 x 11 paper. Comment 19(g)(2)-1 clarifies that any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.

Final provisions. Final § 1026.19(g)(1) and (2), comments 19(g)(1)-1, -2, and -3, 19(g)(2)-1, and comments 19(g)(2)-1, -2, and -3 are adopted pursuant to the Bureau’s authority under TILA section 105(a) and RESPA section 19(a). The final rule and commentary are consistent with TILA’s purposes in that it will increase consumer awareness of the costs of the transaction by informing consumers that settlement costs can be influenced by shopping, thereby promoting the informed use of credit. The final rule and commentary will enhance consumers’ ability to shop for a mortgage loan, which will effect changes in the settlement process that will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, consistent with the Bureau’s authority under section 19(a) of RESPA. The final rule and commentary implement Dodd-Frank Act section 1450, which amends RESPA section 5(a) and (b) to set forth new content for the special information booklet.

Section 1026.20 Disclosure Requirements Regarding Post-Consummation Events

20(e) Escrow Account Cancellation Notice for Certain Mortgage Transactions

Sections 1461 and 1462 of the Dodd-Frank Act amended TILA to create a new section

129D, which establishes certain requirements for escrow accounts for consumer credit transactions secured by a first lien on a consumer's principal dwelling (other than a consumer credit transaction under an open-end credit plan or a reverse mortgage). 15 U.S.C. 1639d(a) through (j). New TILA section 129D(h) and (j) require certain disclosures when an escrow account is established and certain other disclosures when an escrow account is refused or cancelled by the consumer, respectively.

Specifically, new TILA section 129D(h) establishes that a creditor must provide a disclosure with the information set forth under TILA section 129D(h) when an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is established in connection with the transaction (the Pre-Consummation Escrow Establishment Disclosure). Section 129D(j)(1)(A) establishes that a creditor or servicer must provide a disclosure with the information set forth under TILA section 129D(j)(2) when an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction (the Pre-Consummation Escrow Waiver Disclosure). Section 129D(j)(1)(B) establishes that a creditor or servicer must provide disclosures after consummation with the information set forth under TILA section 129D(j)(2) when a consumer chooses, and provides written notice of the choice, to close the consumer's escrow account established in connection with a consumer credit transaction secured by real property and in accordance with any statute, regulation, or contractual agreement (the Post-Consummation Escrow Cancellation Disclosure).

The Board's 2011 Escrows Proposal would have implemented the new TILA escrow requirements, and most aspects of that proposal have been implemented in the Bureau's 2013

Escrows Final Rule. *See* 78 FR 4726 (Jan. 22, 2013). But, for reasons discussed in greater detail in the section-by-section analysis of § 1026.38(l)(7) (Escrow account), the Bureau proposed to implement the Pre-Consummation Escrow Establishment Disclosure and Pre-Consummation Escrow Waiver Disclosure, along with certain other new disclosure requirements for mortgage transactions established by Title XIV (collectively, Affected Title XIV Disclosures), as part of the TILA-RESPA Proposal.

Additionally, on November 23, 2012, the Bureau issued a final rule effectively exempting persons from providing the Post-Consummation Escrow Cancellation Disclosure. *See* 77 FR 70105 (Nov. 23, 2012). In that final rule, the Bureau stated that it had concluded that delaying the Post-Consummation Escrow Cancellation Disclosure and coordinating its implementation with that of the integrated disclosure requirements is in the interest of industry and consumers alike. 77 FR 70105, 70111 (Nov. 23, 2012). The Bureau believed that implementing the Post-Consummation Escrow Cancellation Disclosure along with the integrated disclosure requirements would allow the Bureau to use feedback it has received from consumer testing conducted prior to the TILA-RESPA Proposal, the comments on that proposal, and any additional consumer testing conducted subsequent to the proposal to harmonize the content and format of the Post-Consummation Escrow Cancellation Disclosure, the Pre-Consummation Escrow Waiver Disclosure, and the integrated disclosure. The Bureau stated its belief that consumers would benefit from a more fully integrated and synchronized overall mortgage disclosure scheme, and industry would benefit from a more coordinated implementation of the overall mortgage disclosure scheme mandated by the Dodd-Frank Act and implemented by the Bureau. The Bureau also noted that commenters to the Board's 2011 Escrows Proposal urged the Board to delay implementation of the Dodd-Frank Act's escrow disclosure requirements until the Bureau could finalize the integrated disclosure requirements. The commenters stated that harmonizing the rulemakings would allow for a comprehensive approach, and avoid duplicative forms and repetitive rulemakings. The Bureau believes that it is important to coordinate the implementation and requirements of the Pre-Consummation Escrow Establishment Disclosure, the Pre-Consummation Escrow Waiver Disclosure, and the Post-Consummation Escrow Cancellation Disclosure, because it will result in a more comprehensive and harmonized set of escrow disclosures, which will aid consumer understanding and facilitate compliance for industry.

Accordingly, in this final rule, the Bureau is adopting § 1026.20(e) to implement the Post-Consummation Escrow Cancellation Disclosure, pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b). Disclosure of this information would ensure that consumers have the facts to understand a key aspect of their mortgage loan and avoid the uninformed use of credit, consistent with the purpose of TILA. The Bureau also believes that § 1026.20(e) ensures that the features of the mortgage transaction, both initially and over the term of the transaction, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and improves consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with section 1405(b). Except as otherwise discussed below, § 1026.20(e) generally adopts the proposed Post-Consummation Escrow Disclosure Cancellation requirements in the Board’s 2011 Escrows Proposal.

20(e)(1) Scope

In the Board's 2011 Escrows Proposal, the Board proposed to add a new § 226.20(d) to Regulation Z to implement the disclosure requirements of TILA sections 129D(j)(1)(B) and 129D(j)(2), as enacted by section 1462 of the Dodd-Frank Act. The Board stated in the proposal that TILA section 129D(j)(1)(B) requires a creditor or servicer to provide the disclosures set forth in TILA section 129D(j)(2) when a consumer requests closure of an escrow account that was established in connection with a transaction secured by real property.

The disclosure requirements under proposed § 226.20(d), however, would have covered closed-end credit transactions secured by a first lien on real property or a dwelling. The Board stated in the proposal its belief that the information disclosed when an escrow account will be cancelled likely would be just as useful to a consumer who has a loan secured by manufactured housing as it would to a consumer who has a mortgage loan secured by a site-built home. The Board also believed that the coverage of all dwellings would ease compliance burden for creditors because the coverage of all dwellings would eliminate the analysis that creditors would have to undertake to determine whether and which disclosures would be triggered when a transaction will be secured by any one of various types of dwellings. The Board also proposed to apply § 226.20(d) to instances in which the creditor or servicer decides independently to cancel an escrow account. The Board believed that a consumer whose escrow account will be closed should be informed of the risks attendant with not having an escrow account, even if the consumer is not requesting the cancellation of the account.

Comments

Some industry commenters responding to the Board's 2011 Escrows Proposal asserted that the Board should not apply any of the proposed escrow disclosure requirements to transactions secured only by real property (*e.g.*, vacant or unimproved land), because escrow accounts are rarely established for such transactions. Commenters also asserted that none of the disclosure requirements should apply to dwellings because dwellings may include personal property, such as manufactured homes, recreational vehicles, and boats, and escrow accounts are seldom established for such transactions. Some commenters, including a large bank commenter and an industry trade association representing banks, asserted that the Board exceeded its authority when it proposed to apply the escrow disclosure requirements to transactions secured by dwellings and transactions secured only by real property.

Final Rule

The Bureau is adopting proposed § 226.20(d) in this final rule renumbered as § 1026.20(e)(1), pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b). Other than a modification to exempt reverse mortgage transactions under § 1026.33, § 1026.20(e)(1) finalizes the scope as proposed by the Board. The modification aligns the scope of the Post-Consummation Escrow Cancellation Disclosure more closely with the scope of § 1026.19(f)[250] and the post-consummation partial payment disclosure required by § 1026.39. The Bureau believes this modification will facilitate compliance with the integrated disclosure requirements and Post-Consummation Escrow Cancellation Disclosure requirements. Further, the Bureau noted in the TILA-RESPA Proposal that reverse mortgages have unusual terms and features, and that it intended to address these unique transactions in a separate, future rulemaking. *See* 77 FR 51115, 51137, 51157 (Aug. 23, 2012).

[250] For reasons set forth in greater detail in the section-by-section analysis of § 1026.38(l)(7) below, the Bureau proposed to apply the TILA section 129D escrow requirements to all transactions subject to proposed § 1026.19(f), which would have included all closed-end credit transactions secured by real property, other than a reverse mortgage subject to § 1026.33, whether or not secured by a first-lien on real property.

The Bureau has considered the comments regarding the scope of proposed § 226.20(d). Final § 1026.20(e)(1) only applies to consumer credit transactions for which an escrow account was established. Therefore, if escrow accounts are not typically established in connection with consumer credit transactions secured by personal property used as dwellings, or by vacant land, the disclosure requirement will not be triggered, and thus, the rule may not be a compliance burden. In addition, consumer credit transactions are subject to substantial variability. The Bureau believes that requiring the provision of the Post-Consummation Escrow Cancellation Disclosure to consumers in transactions secured by personal property (*e.g.*, manufactured homes, boats, or recreational vehicles) used as dwellings, or transactions secured only by real property (*e.g.*, vacant or unimproved land), however rarely escrow accounts may be established in such transactions, may provide an important consumer protection if, in fact, an escrow account was set up. Further, the coverage of all dwellings would facilitate compliance because the coverage of all dwellings would eliminate the analysis that creditors would have to undertake to determine whether the cancellation of the escrow account established for a loan secured by a particular type of dwelling would trigger the disclosures. Section 1026.20(e)(1) also provides that the term "escrow account" has the same meaning as under 12 CFR 1024.17(b), and the term "servicer" has the same meaning as under 12 CFR 1024.2(b).

The Bureau is also finalizing comment 20(d)-1 proposed by the Board, renumbered as comment 20(e)(1)-1. Comment 20(e)(1)-1 explains that the term "real property" includes vacant and unimproved land. It clarifies that the term "dwelling" includes vacation and second homes and manufactured homes, boats, and trailers used as residences, and refers to additional guidance regarding the term provided by § 1026.2(a)(19) and related commentary. The Bureau is also finalizing comments 20(d)(2)-2 and -3 as proposed by the Board, renumbered as comments

20(e)(1)-2 and -3, respectively. Comment 20(e)(1)-2 explains that neither creditors nor servicers are required to provide the disclosures required by § 1026.20(e)(2) when an escrow account that was established solely in connection with the consumer's delinquency or default on the underlying debt obligation will be cancelled. Comment 20(e)(1)-3 explains that neither creditors nor servicers are required to provide disclosures required by § 1026.20(e)(2) when the underlying debt obligation for which an escrow account was established is terminated, including by repayment, refinancing, rescission, and foreclosure. Finally, as discussed above, the Board also proposed to require the provision of the disclosure when the creditor or servicer decides independently to cancel an escrow account. The Bureau is also finalizing this aspect of the Board's proposal without modification.

20(e)(2) Content of Required Disclosures

As discussed above, new TILA section 129D(j)(1)(B) establishes that a creditor or servicer must provide disclosures with the information set forth under TILA section 129D(j)(2) when a consumer chooses, and provides written notice of the choice, to close the consumer's escrow account established in connection with a consumer credit transaction secured by real property, and in accordance with any statute, regulation, or contractual agreement. As noted above, the statutory content requirements for this Post-Consummation Escrow Cancellation Disclosure are the same as the content requirements for the Pre-Consummation Escrow Waiver Disclosure.

The Board proposed § 226.20(d)(2), which would have set forth the content requirements of the Post-Consummation Escrow Cancellation Disclosure. Proposed § 226.20(d)(2) would have required a creditor or servicer to provide a statement on the escrow cancellation notice that the notice is to inform the consumer that the escrow account on the consumer's mortgage is being closed, the reason for its closure, and the risk of not having an escrow account. It would have also required the creditor or servicer to disclose the dollar amount of any fee that the consumer will be charged in connection with the closure. Proposed § 226.20(d)(2) would have further required the creditor or servicer to explain what an escrow account is and how it works, and to describe the consequences of the failure to pay for property costs, such as taxes and property insurance. Proposed § 226.20(d)(2) would have additionally required the creditor or servicer to inform the consumer whether the consumer can request that the escrow account be kept open. If the consumer can make such request, proposed § 226.20(d)(2) would have required the creditor or servicer to disclose the telephone number that the consumer can use to make the request and the latest date by which the consumer can make the request. The proposal would have also provided that if the creditor or servicer independently decides to cancel the escrow account, rather than agreeing to close it at the request of the consumer, and does not charge a fee in connection with the cancellation, the creditor or servicer shall omit this disclosure from the table.

Comments

A national consumer advocacy group asserted that the Board should require the creditor or servicer to state a reason if it decides independently to cancel the escrow account, or else the consumer would lack the information needed to determine whether the escrow cancellation is legitimate. Comments from industry commenters also indicated that some industry commenters disagreed with the model language the Board proposed to implement the content requirements that the Dodd-Frank Act established for the Post-Consummation Escrow Cancellation Disclosure. A national trade association representing property insurance carriers expressed concern that the model language the Board proposed to describe lender-placed insurance might have violated the McCarran-Ferguson Act because some States have established regulations with respect to notifying consumers of the placement of lender-placed insurance by their creditors.

A regional bank holding company commenter asserted that the proposed requirement that servicers must disclose the latest date by which the consumer can make the request to keep the consumer's escrow account was unclear because the proposed rule and corresponding commentary do not provide direction as to whether there is a minimum or maximum time limit for this date, or whether the disclosure is optional based on whether or not the creditor has an operational cut-off date. A large bank commenter sought clarification from the Board with respect to how creditors that do not charge a fee for the cancellation of an escrow account are to comply with the proposed requirement that such fee be disclosed.

Final Rule

Pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau is adopting the proposed content requirements of § 226.20(d)(2), with certain modifications and adjustments in response to consumer testing and comments received, in § 1026.20(e)(2). Under the heading "Escrow Closing Notice," § 1026.20(e)(2) provides that if an escrow account was established in connection with a transaction subject to § 1026.20(e), and the escrow account will be cancelled, the creditor or servicer shall disclose clearly and conspicuously the information set forth in § 1026.20(e)(2)(i) and (ii).

Section 1026.20(e)(2)(i) requires a statement informing the consumer of the date on which the consumer will no longer have an escrow account. It also requires a statement that an escrow account may also be called an impound or trust account, the reason why the escrow account will be closed, and a statement that without an escrow account, the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, possibly in one or two large payments a year. The final rule provision also requires a table, titled "Cost to you," that contains an itemization of the amount of any fee the creditor or servicer imposes on the consumer for closing the consumer's escrow account in connection with the transaction, labeled "Escrow Closing Fee," and a statement that the fee is for closing the escrow account.

In addition to the legal authorities referenced above, TILA section 129D(j)(2)(D) establishes that the Bureau may include in the Post-Consummation Escrow Cancellation Disclosure such other information as it determines necessary for the protection of the consumer. A consumer advocacy group asserted that the Board's proposed notice requirements would not have given consumer sufficient information to enable them to make informed decisions in the event that an existing escrow account is canceled. In consideration of the consumer advocacy group's comments, the Bureau has added the requirement to § 1026.20(e)(2)(i) that the creditor or servicer include on the Post-Consummation Escrow Cancellation Disclosure a statement informing the consumer of the date on which the consumer will no longer have an escrow account. The Bureau believes that by identifying the point in time at which the responsibility of ensuring that previously-escrowed obligations are paid in a timely manner will transfer to the consumer, the disclosure will assist consumers in making decisions that will help ensure that the obligations are paid in such manner. For instance, knowing that the escrow account will be canceled as of a date certain may motivate the consumer to save a percentage of the consumer's income to ensure that the consumer's property tax obligation is paid when it becomes due.

Under the reference "In the future," final § 1026.20(e)(2)(ii)(A) requires a statement of the consequences if the consumer fails to pay property costs, including the actions that a State or local government may take if property taxes are not paid and the actions the creditor or servicer may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than a policy that the consumer could obtain directly. The Bureau has considered the comments and does not believe that the content requirements conflict with the McCarran-Ferguson Act, because it does not prohibit a creditor from complying with applicable State regulations on providing notifications to consumers with respect to the creditor's placement of such insurance.

Section 1026.20(e)(2)(ii)(B) requires a statement of a telephone number the consumer may use to request information about the escrow cancellation. The Bureau understands the view of the consumer advocate commenter that in situations where the creditor or servicer independently cancels the consumer's escrow account, the consumer should be able to receive information about the reason for the cancellation. However, the Bureau believes that this consideration must be counterbalanced by the fact that there could be a variety of reasons for the cancellation such that it would be difficult to provide model disclosures that can be used to facilitate compliance. The Bureau believes the best way to balance these competing concerns is to require the creditor or servicer to provide the consumer with a telephone number that the consumer can use to request more information about the cancellation of the consumer's escrow account. Accordingly the Bureau is adopting final § 1026.20(e)(2)(ii)(B), which requires a statement with a telephone number that the consumer can use to request additional information about the escrow account cancellation.

The Bureau modified the proposed content requirements to address situations where the creditor or servicer does not have a cut-off date. Accordingly, § 1026.20(e)(2)(C) requires a statement of whether the creditor or servicer offers the option of keeping the escrow account open and, as applicable, a telephone number the consumer can use to request that the account be kept open. Section 1026.20(e)(2)(ii)(D) requires a statement of whether there is a cut-off date by which the consumer can request that the account be kept open.

The Bureau is also making modifications and adjustments to the Board's proposed content requirements to incorporate elements of the model language the Bureau is adopting for the Pre-Consummation Escrow Establishment Disclosure and the Pre-Consummation Escrow Waiver Disclosure. The model language the Bureau is adopting for the Pre-Consummation Escrow Establishment Disclosure and the Pre-Consummation Escrow Waiver Disclosure is based on prototype language the Bureau created for both disclosures, which was refined over several rounds of testing, in response to feedback from consumer and industry participants to incorporate the use of plain language, simplify the disclosures, and improve accuracy and consumer comprehension. *See* Kleimann Testing Report at 228, 260, and 272.

The Bureau believes that it is appropriate to incorporate elements of the model language that the Bureau is adopting for the Pre-Consummation Escrow Establishment Disclosure and the Pre-Consummation Escrow Waiver Disclosure in the model language used for the Post-Consummation Escrow Cancellation Disclosure. Such incorporation will harmonize the content of the Post-Consummation Escrow Cancellation Disclosure, the Pre-Consummation Escrow Establishment Disclosure, and the Pre-Consummation Escrow Waiver Disclosure and create a synchronized and comprehensive set of disclosures regarding escrow accounts. Consumers will also benefit from a more fully integrated and synchronized disclosure scheme. Additionally, as noted above, the Dodd-Frank Act's statutory content requirements for the Pre-Consummation Escrow Waiver Disclosure and the Post-Consummation Escrow Cancellation Disclosure are the same. Accordingly, the Bureau believes that a more synchronized disclosure scheme for the Pre-

Consummation Escrow Waiver Disclosure and the Post-Consummation Escrow Cancellation Disclosure will facilitate compliance for industry.

The Bureau is finalizing comment 20(d)(2)-1 as proposed by the Board, renumbered as comment 20(e)(2)-1. Comment 20(e)(2)-1 explains that the clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer. The Bureau is finalizing comment 20(e)(2)(i)-1, which clarifies the requirement to disclose the Escrow Closing Fee. Comment 20(e)(2)(i)-1 explains that § 1026.20(e)(2)(i) requires the creditor to itemize the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the consumer's escrow account, labeled "Escrow Closing Fee." If the creditor or servicer independently decides to cancel the escrow account, rather than agreeing to close it at the request of the consumer, and does not charge a fee in connection with the cancellation, the creditor or servicer complies with § 1026.20(e)(2)(i) by leaving the disclosure blank on the front-side of the one-page document described in § 1026.20(e)(4). The Bureau is making this clarification to harmonize the disclosure of the Escrow Closing Fee with the disclosure of the Escrow Waiver Fee required by § 1026.38(l)(7)(i)(B)(*2*), discussed in greater detail below in the section-by-section analysis of § 1026.38(l)(7). The Bureau also believes that the comment addresses the clarification sought by a large bank commenter with respect to how creditors that do not charge a fee for the cancellation of an escrow account are to comply with the proposed requirement that such a fee be disclosed.

20(e)(3) Optional Information

The Board proposed § 226.20(d)(3), which would have provided that the creditor or servicer providing the Post-Consummation Escrow Cancellation Disclosure, may, at its option, include its name or logo, or the consumer's name, property address, or loan number on the disclosure so long as it complies with the form requirements that the Board proposed. Some commenters, including several industry trade associations representing banks and financial services companies asserted that creditors should be allowed to add whatever information they deem important to the Post-Consummation Escrow Cancellation Disclosure.

Final rule. The Bureau has considered the comments, and notes that this final rule does not prohibit a creditor or servicer from providing additional information the creditor or servicer deems important at the same time as the creditor or servicer provides the Post-Consummation Escrow Cancellation Disclosure. Under the final rule, the creditor or servicer may provide additional information, provided that they follow the requirements set forth in this § 1026.20(e) with respect to the Post-Consummation Escrow Cancellation Disclosure. For example, the creditor or servicer may provide additional information on separate pages and include those pages in the same transmittal that contains the Post-Consummation Escrow Cancellation Disclosure. Accordingly, the Bureau is generally adopting the provision that the Board proposed, with modifications as described below. The Bureau believes that the modifications to the optional information requirements enhance consumer understanding, and the modifications to the form requirements complement the form of the Post-Consummation Escrow Cancellation Disclosure finalized by the Bureau in § 1026.19(e)(4).

Pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau adopts § 1026.20(e)(3). Final § 1026.20(e)(3) provides that creditor or servicer may, at its option, include its name or logo, the consumer's name, phone number, mailing address and property address, or the issue date of the notice, loan number or the consumer's account number on the notice required by this § 1026.20(e). Section 1026.20(e)(3) also provides that, except for the name and logo of the creditor or servicer, the information may be placed between the heading required by § 1026.20(e)(2) and the disclosures required by § 1026.20(e)(2)(i) and (ii). The name and logo may be placed above the heading required by § 1026.20(e)(2). The Bureau is finalizing comment 20(d)(3)-1 proposed by the Board substantially as proposed, renumbered as comment 20(e)(3)-1. Comment 20(e)(3)-1 explains that § 1026.20(e)(3) lists information that the creditor or servicer may, at its option, include on the notice required by this § 1026.20(e), and provides guidance on the placement of the optional information.

20(e)(4) Form of Disclosure

The Board proposed form requirements for the Post-Consummation Escrow Cancellation Disclosure in proposed § 226.20(d)(1). The Board generally proposed to require the creditor or servicer to provide the disclosures in the form of a table and in the format of a set of questions and answers. The Board also proposed commentary to explain the proposed form requirements and proposed a model form of appendix H to Regulation Z that creditors and servicers could use to comply with the proposed requirements. Commenters did not provide comments to the Board on this aspect of the Board's proposal.

Accordingly, the Bureau is adopting form requirements for the Post-Consummation Escrow Cancellation Disclosure in § 1026.20(e)(4), as well as a model form that creditors and servicers could use to comply with the form requirements. The model form is adopted as form H-29 of appendix H to Regulation Z, as described below in the section-by-section analysis of appendix H to Regulation Z below. The Bureau is generally adopting the form requirements of the Board's proposal, but the Bureau is modifying them to harmonize and synchronize the appearance of the Post-Consummation Escrow Cancellation Disclosure with the Pre-

Consummation Escrow Establishment Disclosure and Pre-Consummation Escrow Waiver Disclosure that the Bureau is adopting in this final rule. The Bureau believes that a harmonized and synchronized set of disclosures benefit consumers by enhancing consumer understanding and facilitate compliance by industry.

The Bureau is adopting § 1026.20(e)(4) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b). Section 1026.20(e)(4) provides that the disclosures required by § 1026.20(e)(2) shall be provided in a minimum 10-point font, grouped together on the front side of a one-page document, separate from all other materials, with the headings, content, order, and format substantially similar to model form H-29 of appendix H. It also provides that the disclosure of the heading required by § 1026.20(e)(2) shall be more conspicuous than, and shall precede, the other disclosures required by § 1026.20(e)(2).

The Bureau is finalizing comment 20(d)(1)(i)-1 as proposed by the Board, renumbered as comment 20(e)(4)-1. The Bureau is also finalizing comment 20(d)(1)(i)-2 as proposed by the Board, renumbered as 20(e)(4)-2. Comment 20(e)(4)-1 explains that the disclosures required by § 1026.20(e)(2) must be grouped together on the front side of a separate one-page document that contains no other material. Comment 20(e)(4)-2 explains that the notice containing the disclosures required by § 1026.20(e)(2) must be in writing in a form that the consumer may keep. The comment also refers to § 1026.17(a) and related commentary for additional guidance on the form requirements applicable to the disclosures required by § 1026.20(e)(2).

20(e)(5) Timing

Section 129D(j)(1)(B) of TILA, as added by Dodd-Frank Act section 1462, requires a creditor or servicer to provide the Post-Consummation Escrow Cancellation Disclosure in a timely manner. In the Board's 2011 Escrows Proposal, under proposed § 226.20(d)(4), a creditor or a servicer would have had to ensure that the Post-Consummation Escrow Cancellation Disclosure would be received by the consumer no later than three business days before closure of the consumer's escrow account. The Board believed that a consumer should be provided sufficient time to consider the attendant responsibilities and risks of not having an escrow account. The Board additionally believed that three business days, which would mean all calendar days except for Sundays and specified public holidays, rather than the general definition of business day in § 1026.2(a)(6), would provide a consumer with such time to reflect on the consequences and risks associated with the closure of an escrow account.

The Board also proposed § 226.20(d)(5), which would have applied the "mailbox rule" to the timing requirement of proposed § 226.20(d)(4). Proposed § 226.20(d)(5) would have provided that if the disclosures required by § 226.20(d)(2) are mailed to the consumer or delivered by means other than in person, the consumer is considered to have received the disclosures three business days after they are mailed or delivered. The Board also proposed commentary to § 226.20(d)(4) and (5) to further clarify the proposed requirements and illustrate the requirements with examples.

Comments

Some industry commenters opposed the timing requirement set forth in proposed § 226.20(d)(4) because they believed that the creditor or servicer should not have to wait to close the consumer's escrow account after providing the consumer with the cancellation notice. Several industry trade associations representing banks and financial companies asserted that the Dodd-Frank Act does not establish a waiting period requirement for termination of escrow accounts. They also asserted that imposing a waiting period for an escrow account termination would be inconsistent with the Homeowners Protection Act of 1998 (12 U.S.C. 4901 *et seq.*) (HPA), because the HPA established timing requirements that a servicer must follow when the servicer cancels private mortgage insurance. It appears that the commenters believed that the timing requirements the Board set forth in proposed § 226.20(d)(4) would have been inconsistent with the requirements of the HPA if the consumer's escrow account was being cancelled in connection with the cancellation of private mortgage insurance pursuant to the HPA.

The commenters also asserted that a waiting period for an escrow termination also contradicts proposed § 226.45(b)(3)(i)(A) in the Board's 2011 Escrows Proposal, because the provision would have permitted cancellation of an escrow account when a loan is paid in full. A large bank commenter asserted rather than requiring creditors to send the Post-Consummation Escrow Cancellation Disclosure prior to the closure of the consumer's escrow account, the Bureau should permit creditors to send the notice after the consumer's escrow account has been closed because the consumer retains the ability to reinstate the escrow account after its closure.

A national consumer advocacy group commenter asserted that the three-business-day waiting period would not give consumers sufficient notice to dispute escrow account cancellations or to make arrangements to begin saving for expenses that have been escrowed. This commenter also stated that the proposal would be at odds with RESPA's qualified written request requirements, which provides that servicers have 30 days to respond to a consumer's qualified written request to correct a servicing error, because the timing requirement set forth in proposed § 226.20(d)(4) would have permitted a servicer to cancel a consumer's escrow account before the servicer is required to correct any servicer mistakes. The commenter asserted that the Board should impose a 45-day minimum notice requirement and an automatic extension requirement while the servicer investigates a consumer's qualified written requests.

Final Rule

The Bureau has considered the comments and is finalizing the proposal's timing requirements set forth in proposed § 226.20(d)(4) and (5), renumbered as § 1026.20(e)(5), with modifications. The Bureau is adopting § 1026.20(e)(5) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b). Section 1026.20(e)(5)(i) provides that if the creditor or servicer cancels the escrow account at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by § 1026.20(e)(2) no later than three business days before closure of the consumer's escrow account. The Bureau believes that a consumer should be provided sufficient time to consider the attendant responsibilities and risks of not having an escrow account prior to the closure of the account. Three business days, which would include all calendar days except for Sundays and specified public holidays, would provide a consumer with such time if the creditor or servicer cancels the escrow account at the consumer's request. Further, finalizing the proposed timing requirements in the Board's proposed § 226.20(d)(4) and (5) is well within the Bureau's authority to implement TILA section 129D(j)(1)(B) which requires the creditor or servicer to provide the Post-Consummation Escrow Cancellation Disclosure in a "timely" manner.

Section 1026.20(e)(5)(i) does not cause an irreconcilable conflict with the timing requirements of the HPA. If the creditor must cancel the consumer's escrow account by a date certain pursuant to the requirements established by the HPA, the Bureau believes that the comments illustrate the actions the creditor must take with respect to ensuring that the account is cancelled by that date. With respect to the concern about the imposition of a waiting period for the cancellation of an escrow account when a loan is paid in full, comment 20(e)(1)-3, discussed above, clarifies that creditors and servicers are not required to provide the consumer with the Post-Consummation Escrow Cancellation Disclosure when the mortgage loan for which an escrow account was established is terminated by, for example, repayment of the loan.

Section 1026.20(e)(5)(ii) provides that if the creditor or servicer cancels the escrow account and the cancellation is not at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by § 1026.20(e)(2) no later than 30 business days before the closure of the consumer's escrow account. Section 1026.20(e)(5)(iii) provides that if the disclosures required by § 1026.20(e)(2) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

As noted, a consumer advocacy group stated that three business days' notice of cancellation is not sufficient time for consumers to contest the cancellation, where the consumer did not initiate the cancellation. The Bureau believes that providing insufficient notice of cancellation could result in consumer harm, especially when the cancellation was based on the creditor or the servicer's error. Accordingly, the Bureau is modifying the Board's proposed timing requirements where the escrow account is being cancelled by the creditor or servicer, but not at the consumer's request.

To address these concerns, § 1026.20(e)(5)(ii) provides that if the creditor or servicer cancels the escrow account and the cancellation is not at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by § 1026.20(e)(2) no later than 30 business days before the closure of the consumer's escrow account. The Bureau acknowledges that the 2013 RESPA Servicing Final Rule generally provides a servicer with 30 days (excluding legal public holidays, Saturdays, and, Sundays) to respond after it receives the borrower's notice of error.[251] But the Bureau believes that this must be counterbalanced by the concern about compliance burden with incorporating the timing requirements set forth in that rule in § 1026.20(e)(4) because those requirements would not be analogous to Regulation Z's definitions of business day.

The Bureau is also finalizing proposed comments 20(d)(4)-1 and -2 substantially as proposed, renumbered as comment 20(e)(5)(i)-1. Comment 20(e)(5)(i)-1 explains that § 1026.20(e)(5)(i) provides that if the creditor or servicer cancels the escrow account at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by § 1026.20(e)(2) no later than three business days before closure of the consumer's escrow account. The comment also explains that for purposes of § 1026.20(e)(5), the term "business day" means all calendar days except Sundays and legal public holidays referred to in § 1026.2(a)(6). The comment additionally references comment 2(a)(6)-2, and illustrates the requirement with an example.

The Bureau is adopting the Board's proposed comment 20(d)(5)-1 substantially as proposed, renumbered as comment 20(e)(5)(iii)-1. Comment 20(e)(5)(iii)-1 explains that § 1026.20(e)(5)(iii) provides that if the disclosures required under § 1026.20(e)(2) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. Accordingly, if the creditor or servicer provides the disclosures required by § 1026.20(e)(2) by mail, the consumer is considered to have received them three business days after they are placed in the mail for purposes of determining when the waiting periods required by § 1026.20(e)(5)(i) and (ii) begins. The comment also explained that creditors and servicers that use electronic mail or a courier to

[251] *See* 78 FR 10696, 10878 (Feb. 14, 2013).

provide disclosures may also follow this approach. The comment further explains that if, however, the creditor or servicer delivers the disclosures required by § 1026.20(e)(2) to the consumer in person, the escrow account may be closed any time on the third or 30th business day following the date of delivery, as applicable. Finally, the comment explains that whatever method is used to provide disclosures, creditors and servicers may rely on documentation of receipt in determining when the three-business-day period required by § 1026.20(e)(5)(i) or the 30-business-day period required by § 1026.20(e)(5)(ii) before the closure of the escrow account begins.

Section 1026.22 Determination of Annual Percentage Rate

22(a) Accuracy of Annual Percentage Rate

The Bureau proposed conforming amendments to § 1026.22 to reflect the fact that proposed § 1026.38(o)(2) would have set forth finance charge tolerances for mortgage transactions subject to § 1026.19(f), as discussed below. These tolerances are not different from the tolerances that currently apply to closed-end mortgage transactions. The tolerances set forth in current § 1026.18(d)(1) would have continued to apply to closed-end transactions that would not have been subject to proposed § 1026.19(f). Accordingly, the Bureau proposed to revise § 1026.22(a)(4) and (5) and comment 22(a)(4)-1 to add references to § 1026.38(o)(2).

The Bureau did not receive comments on this aspect of the proposal. Accordingly, for the reasons stated in the proposal, the Bureau is finalizing the amendments to § 1026.22 as proposed.

Section 1026.24 Advertising

24(d) Advertisement of Terms That Require Additional Disclosures

24(d)(2) Additional Terms

Comment 24(d)(2)-2 currently provides guidance on how to state the terms of repayment in an advertisement, as required in § 1026.24(d)(2)(ii). The Bureau proposed to exercise its authority under TILA section 105(a) to revise the comment to conform with the additional forms of repayment term disclosures that would have applied to various types of mortgage transactions under the proposal. Proposed comment 24(d)(2)-2 would have clarified that, in advertisements for closed-end credit secured by real property or a dwelling, the repayment terms disclosed in the interest rate and payment summary table or the projected payments table under §§ 1026.18(s) or 1026.37(c) and 1026.38(c), as applicable, can be provided in an advertisement pursuant to § 1026.24(d)(2)(ii). The Bureau stated in the proposal that it believed that the format of disclosures applicable to a particular transaction is also the most appropriate format for advertising purposes. Proposed comment 24(d)(2)-2 also would have made clear that the payment schedule described in § 1026.18(g) is not the only permissible disclosure under § 1026.24(d)(2)(ii).

The Bureau did not receive comments specifically related to the proposed revision to comment 24(d)(2)-2. However, several commenters stated that advertising rules for mortgages are generally too complex and discourage providing any useful information on the term of the loan or pricing. Commenters also stated that the annual percentage rate should not be required on mortgage advertisements because consumers do not understand the annual percentage rate. The Bureau did not propose such a broad change to the advertising requirements of § 1026.24 in the proposal, but rather only proposed the clarifications to comment 24(d)(2) described above to reflect the interest rate and payment summary table under § 1026.18(s) and the new provisions applicable to the integrated disclosures, the projected payments table under §§ 1026.37(c) and 1026.38(c). While the Bureau recognizes some of the issues related to consumer understanding of the annual percentage rate disclosure are described in the proposal and the section-by-section analysis of § 1026.37(l), the Bureau did not propose to eliminate the requirement that it be included in mortgage advertisements and, thus, it will continue to be required by § 1026.24 under this final rule. Accordingly, the Bureau adopts the revisions to comment 24(d)(2)-2 as proposed.

Section 1026.25 Record Retention

In the TILA-RESPA Proposal, the Bureau proposed to amend § 1026.25 to apply the recordkeeping requirements under Regulation X to the proposed integrated disclosures and to require creditors to keep such records in an electronic, machine readable format.

25(a) General Rule

The Bureau proposed to amend § 1026.25(a) to exclude transactions subject to the disclosure requirements of § 1026.19(e) and (f) from the general recordkeeping requirement. Instead, the Bureau proposed to establish the recordkeeping requirements for such transactions under a new § 1026.25(c)(1).

The Bureau did not receive comments regarding the amendment to § 1026.25(a). Accordingly, the Bureau is finalizing § 1026.25(a) as proposed.

25(c) Records Related to Certain Requirements for Mortgage Loans

25(c)(1) Records Related to Requirements for Loans Secured by Real Property

25(c)(1)(i) General Rule

Neither TILA nor RESPA contain record retention requirements. Section 1026.25 of Regulation Z requires creditors to retain evidence of compliance with TILA for two years after the date disclosures are required to be made or action is required to be taken. Section 1024.7(f) of Regulation X requires lenders to retain documentation of any reason for providing a revised RESPA GFE for no less than three years after settlement. Furthermore, § 1024.10(e) of

Regulation X requires lenders to retain each completed RESPA settlement statement and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage.

The Bureau proposed to reconcile these provisions by generally requiring a creditor to retain evidence of compliance with the requirements of § 1026.19(e) and (f) for three years. The Bureau stated in the proposal that it recognized that extending the record retention requirement from two years, as currently provided in Regulation Z, to three years may result in increased costs. However, the Bureau was not aware of any issues related to complying with the three-year period already required by Regulation X. The Bureau stated that creditors may be able to use existing recordkeeping systems to retain the integrated disclosures at no additional cost. Additionally, the Bureau noted that several sections of RESPA are subject to a three year statute of limitations.[252] The Bureau recognized that adopting a document retention period of less than three years could affect legal actions brought under RESPA. Thus, the Bureau stated its belief that it would be appropriate to require creditors to maintain records related to compliance for three years, as opposed to the two-year requirement of Regulation Z.

Pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA, the Bureau proposed § 1026.25(c)(1)(i), which stated that, except as provided under § 1026.25(c)(1)(ii), a creditor shall retain evidence of compliance with the requirements of § 1026.19(e) and (f) for three years after the later of the date of consummation, the date disclosures are required to be made, or the date the action is required to be taken. The Bureau stated its belief that this proposed modification would ensure that records associated with the

[252] "[A]ctions [under sections 6, 8, or 9] brought by the Bureau, the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation." RESPA section 16; 12 U.S.C. 2614.

integrated disclosures were kept long enough to facilitate compliance with both TILA and RESPA, which is necessary to both prevent circumvention of and facilitate compliance with TILA and RESPA. The Bureau solicited comment on whether the three-year period was appropriate, whether the retention requirement should be extended to five years to match the recordkeeping requirement in proposed § 1026.25(c)(1)(ii), and whether a shorter time period would conflict with the statute of limitations under section 16 of RESPA.

Several industry commenters, including a credit union and an industry trade association, noted that creditors were likely to maintain all records for the longer, five-year retention period for closing disclosures mandated by proposed § 1025(c)(1)(ii). As such, the commenters reasoned that creditors would not benefit from the shorter retention period in proposed § 1025(c)(1)(i), and suggested that the Bureau extend that requirement to match the requirement in proposed § 1026.25(c)(1)(ii). The Bureau appreciates the commenters' reasoning. However, the Bureau is finalizing § 1025(c)(1)(i) as proposed in keeping with its intent to mirror the existing retention periods for amendments to GFEs, as set forth in § 1024.7(f). In addition, although some creditors may maintain all records for the longer period, some may comply strictly with the three-year period, and thus, there may be less costs imposed on industry from the three-year period. In addition, the Bureau is not aware of any issues raised with regard to the existing three-year retention period under Regulation X.

Proposed comment 25(c)(1)-1 would have applied guidance currently applicable under § 1026.25(a) to proposed § 1026.25(c). The proposed comment would have clarified that the creditor must retain evidence that it performed the required actions as well as made the required disclosures. This included, for example, evidence that the creditor properly differentiated between affiliated and independent third party settlement service providers for determining good faith under § 1026.19(e)(3); evidence that the creditor properly documented the reason for revisions under § 1026.19(e)(3)(iv); or evidence that the creditor properly calculated average costs under § 1026.19(f)(3)(ii). Proposed comment 25(c)(1)-2 would have provided a cross-reference to § 1026.19(e)(1)(ii), which imposed responsibilities on mortgage brokers in some situations and may have implicated § 1026.25(c).

The Bureau did not receive comments regarding the proposed changes to proposed comments 25(c)(1)-1 and 25(c)(1)-2. For the reasons discussed above and in the proposed rule, the Bureau is finalizing § 1026.25(c)(1)(i) and comments 25(c)(1)-1 and 25(c)(1)-2 as proposed, pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA.

25(c)(1)(ii) Closing Disclosures

As noted above, while § 1026.25 of Regulation Z generally requires creditors to retain evidence of compliance with TILA for two years after the date disclosures are required to be made or action is required to be taken, § 1024.10(e) of Regulation X requires lenders to retain each completed RESPA settlement statement and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. If the lender disposes of its interest and does not service the mortgage, § 1024.10(e) requires the lender to provide the lender’s copy of the RESPA settlement statement to the owner or servicer of the mortgage as part of the transfer of the loan file. The owner or servicer to whom the files are transferred must retain the RESPA settlement statement for the remainder of the five-year period.

Because the Closing Disclosure contains the settlement information that is currently provided on the RESPA settlement statement, the Bureau proposed to adopt the five-year requirement with respect to the Closing Disclosure. The Bureau stated in the proposal that this information serves an important purpose as both the record of all fees associated with the transaction and as part of the official disbursement record. As such, this information may be needed for more than two years after the transaction. For example, State and local laws related to transactions involving real property may depend on the information being available for five years. Additionally, the Bureau recognized that the five-year recordkeeping requirement under Regulation X has been in effect since 1992.[253] The Bureau stated in the proposal that it was unaware of any problems caused by the five-year requirement and did not believe the time period should be shortened without evidence that the rule is not operating as intended, is unnecessary, or otherwise harms consumers. Thus, the Bureau stated its belief that requiring creditors to retain copies of the Closing Disclosure for five years was appropriate.

Pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA, the Bureau proposed § 1026.25(c)(1)(ii). Proposed § 1026.25(c)(1)(ii)(A) would have stated that the creditor shall retain each completed disclosure required under § 1026.19(f)(1)(i) and (f)(4)(i), and all documents related to such disclosures, for five years after settlement. The Bureau stated that it believed that this proposed modification would ensure that records associated with the integrated disclosures were kept long enough to facilitate compliance with both TILA and RESPA, which was necessary both to prevent circumvention of and facilitate compliance with TILA. The Bureau also stated the proposed recordkeeping requirement would enable accurate supervision, which would result in the more effective advance disclosure of settlement costs, consistent with section 19(a) of RESPA.

Proposed § 1026.25(c)(1)(ii)(B) would have provided that, if a creditor sells, transfers, or otherwise disposes of its interest in a mortgage and does not service the mortgage, the creditor

[253] 57 FR 49600, 49607 (Nov. 2, 1992).

must provide a copy of the disclosures required under § 1026.19(f)(1)(i) or (f)(4)(i) to the owner or servicer of the mortgage as a part of the transfer of the loan file, and such owner or servicer must retain such disclosures for the remainder of the five-year period. Proposed § 1026.25(c)(1)(ii)(C) would have provided that the Bureau has the right to require provision of copies of records related to the disclosures required under § 1026.19(f)(1)(i) or (f)(4)(i).

The Bureau recognized that the proposal was different from current requirements under Regulation X, which do not require a creditor to maintain these documents if the creditor disposes of its interest in the mortgage loan and does not service the mortgage loan. However, the Bureau believed that the current requirement provided little practical benefit to creditors, because other provisions of Regulations Z and X require creditors to maintain records of compliance for several years, even if the creditor transfers, sells, or otherwise disposes of its interest in the mortgage loan. The Bureau solicited feedback regarding whether it was appropriate for creditors that transfer, sell, or otherwise dispose of their interest in the mortgage loan, and do not service the mortgage loan, to keep these records for the five-year period. The Bureau also requested feedback on the additional costs that would result from such a requirement.

The Bureau did not receive any comments with respect to the appropriateness of the five-year retention period proposed by § 1026.25(c)(1)(ii)(A). It did, however, receive requests for clarification with respect to whether a creditor that sells, transfers, or otherwise disposes of its interest in a mortgage, as contemplated by § 1026.25(c)(1)(ii)(B), must continue to maintain a copy of the Closing Disclosure in its own records after disposing of the loan. To address this concern, the Bureau is revising § 1026.25(c)(1)(ii)(A) to clarify that, notwithstanding the provisions of § 1026.25(c)(1)(ii)(B), a creditor is required to retain a copy of the disclosures provided under § 1026.19(f)(1)(i) or (f)(4)(i) for a five-year period, even after it sells, transfers, or otherwise disposes of its interest in the loan. For the reasons set forth above and in the proposal, the Bureau is otherwise finalizing § 1026.25(c)(1)(ii) as proposed.

25(c)(1)(iii) Electronic Records

In the TILA-RESPA Proposal, the Bureau proposed to require retention of records of compliance in an electronic, machine readable format. The proposal stated that "machine readable" meant, for purposes of the proposal, a format where the individual data elements comprising the record can be transmitted, analyzed, and processed by a computer program, such as a spreadsheet or database program. Data formats for image reproductions (*e.g.*, PDF) or document text, such as those used by word processing programs, were not considered machine readable for purposes of the proposal.

Currently, neither TILA nor RESPA address electronic recordkeeping. Regulation Z permits, but does not require, electronic recordkeeping. Current comment 25(a)-2 provides that records can be maintained by any method that reproduces disclosures accurately, including computer programs. Regulation X also permits, but does not require, electronic records. *See* § 1024.23 and HUD RESPA FAQs p.3, #4 ("GFE-General").

Issues Related to Adopting a Standard, Machine Readable, Electronic Data Format

The Bureau stated in the proposal that prior to proposing the electronic, machine readable requirement, it sought information regarding the costs of keeping records in an electronic, machine readable format. Based on these discussions, the Bureau recognized that requiring records in an electronic, machine readable format would impose new costs on industry, which would be limited to the up-front costs of upgrading existing computer systems and additional, ongoing data storage costs. As stated in the proposal, however, the Bureau also believed that keeping records in machine readable format could provide industry and consumers with numerous, significant benefits. The Bureau stated its belief that a prescribed electronic format could potentially reduce loan origination costs due to efficiency gains associated with a standardized data format. Further, a single data format could lower long-term costs by enabling creditors to migrate from older data formats to a single, standard data format. The Bureau stated it believed that a standard format could also foster innovation by allowing technology companies to create new programs that promote efficiency instead of tailoring programs to each firm's proprietary data format. In addition, the Bureau stated that the requirement may reduce industry's reliance on paper files, while allowing regulators to monitor some aspects of compliance remotely.

The Bureau believed that these benefits outweighed the costs associated with adopting and maintaining such a format. Thus, pursuant to its authority under section 105(a) of TILA, the Bureau proposed § 1026.25(c)(1)(iii), which would have provided that a creditor must retain evidence of compliance in an electronic, machine readable format. The Bureau believed that this proposed requirement would ensure that records associated with the integrated disclosures were readily available for examination, which could prevent circumvention of and facilitate compliance with TILA. The Bureau stated that the proposed regulation could also facilitate compliance with TILA by easing the burden of examinations and ensuring that all entities subject to TILA kept records in a standard format.

Based on the Bureau's discussions with industry regarding machine readable data formats, the Bureau stated in the proposal that it believed that XML may be the most appropriate format for electronic recordkeeping. However, the Bureau did not specifically propose to mandate use of the XML format and instead solicited feedback on the costs and benefits of specific data formats. In addition, the Bureau proposed comment 25(c)(1)(iii)-1, which would have clarified that the requirements of § 1026.25(c)(1)(iii) were in addition to any other formats that may be required by administrative agencies responsible for enforcing the regulation. The Bureau solicited comment on this approach, including the costs associated with such a requirement. The Bureau also solicited comments on whether a small business exemption to the requirement was appropriate, and sought feedback on the proper contours of such an exemption. Finally, the Bureau solicited feedback on small business' current technology costs, and how such costs might be affected by an electronic recordkeeping requirement.

The Bureau received voluminous comments in response to proposed § 1026.25(c)(1)(iii) from various stakeholders, including creditors, industry trade associations, government entities, real estate attorneys, and title agents. The overwhelming majority of these comments expressed strong opposition to the proposed requirement. Most comments focused on the significant costs of implementation, especially for creditors who were not currently storing information in machine-readable format or who had recently adopted a specific electronic format and would now have to invest time and money in implementing a new technology. Many of these commenters also stated that any costs would eventually be passed on to consumers, or cause creditors to tighten or discontinue their lending programs. Other comments casted doubt on the benefits of a mandated electronic format, especially given that the proposal did not require that creditors adopt a specific electronic format or field-naming protocol. Still others raised practical concerns, such as how the electronic format would capture the narrative fields included in the integrated disclosures, or how creditors would be expected to coordinate with third parties, such as settlement agents, who would not be subject to the new requirement but who may nonetheless create or maintain certain transaction documents.

Other comments objected to the proposal on the grounds that it was ambiguous, stating that the proposal lacked clarity, including a sufficiently-specific definition of “machine readable format” and with respect to its application to entities other than creditors. Other commenters asserted that the rule went beyond the Bureau’s statutory authority, or that the Bureau should not be mandating specific technological requirements for industry because it was a regulatory agency and lacked technical expertise in this area. The majority of commenters requested that the Bureau either withdraw § 1026.25(c)(1)(iii) altogether or delay it for a later rulemaking. Many small entity industry commenters requested that the Bureau adopt a small entity exemption, if the Bureau were to finalize the machine readable format requirement, and suggested different thresholds for such an exemption, stating that the costs of compliance would be especially burdensome for those entities.

The Bureau considered these comments and has decided not to finalize proposed § 1026.25(c)(1)(iii) and related comment 25(c)(1)(iii)-1. The Bureau believes that adopting a single standardized data format would be critical to achieving many of the potential benefits discussed in the proposal, and that significantly more consultation with stakeholders would be beneficial before taking that step. In light of the potential implementation costs for creditors, settlement agents, and other affected parties, the Bureau believes that it is important to assure that that any data format requirements be undertaken with care.

In addition, the Bureau recognizes that industry will need to make a number of data format decisions in the coming months as companies implement the final rule, and continues to believe that the adoption of a uniform electronic format throughout the mortgage industry could provide significant downstream benefits to industry and consumers alike. These benefits could include more efficient and cost-effective processing of mortgage loan data, improved consistency and data quality throughout the loan lifecycle, greater transparency for investors, and the potential for new technologies to reduce costs and streamline the mortgage process. For example, the GSEs, at the direction of the Federal Housing Finance Agency, are currently engaged in an effort to develop a standardized dataset for the Closing Disclosure, which they call the "Uniform Closing Dataset (UCD)," and which will utilize the data standards of the Mortgage Industry Standards Maintenance Organization (MISMO).[254] The GSEs have already created a draft dataset based on the proposed Closing Disclosure and plan to issue a final dataset after they revise the draft dataset based on this final rule. When fully implemented, such an initiative as the UCD could produce a uniform dataset for the vast majority of the market.

The Bureau will monitor the GSEs' development of the UCD and any other similar initiatives and will consider whether it can take additional steps to encourage the voluntary adoption of uniform standards or whether additional rulemaking activity may be appropriate in this area. In addition, in connection with its planned efforts to provide the public with implementation assistance with respect to this final rule, the Bureau expects to provide assistance to the GSEs in connection with their finalization of the draft UCD.

Section 1026.28 Effect on State Laws

TILA preempts State laws to the extent of their inconsistency with the statute and permits States, creditors, and other interested parties to request a determination by the Bureau regarding such inconsistency. Specifically, section 111(a)(1) states that the provisions of chapters 1 (General Provisions), 2 (Credit Transactions), and 3 (Credit Advertising and Limits on Credit

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[254] Fannie Mae, *Uniform Closing Dataset Overview* (June 30, 2013), available at https://www.fanniemae.com/content/fact_sheet/ucd-overview.pdf; Freddie Mac, *GSEs Developing Standardized Dataset to Support CFPB's Closing Disclosure Form* (July 30, 2013), available at http://www.freddiemac.com/singlefamily/news/2013/0730_umpd_efforts.html

Card Fees) of TILA do not annul, alter, or affect the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of TILA and then only to the extent of the inconsistency. 15 U.S.C. 1610(a)(1). Upon its own motion or upon the request of any creditor, State, or other interested party that is submitted in accordance with procedures prescribed in regulations of the Bureau, the Bureau shall determine whether any such inconsistency exists. *Id.* If the Bureau determines that a State-required disclosure is inconsistent, creditors located in that State may not make disclosures using the inconsistent term or form, and shall incur no liability under the State law for failure to use such term or form, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. *Id.* Section 111(b) generally provides that TILA does not otherwise annul, alter, or effect in any manner the meaning, scope, or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts, or rates of charges, or any elements of charges, permissible under such laws in connection with the extension or use of credit, and neither does TILA extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply. 15 U.S.C. 1610(b).

Regulation Z § 1026.28 implements TILA section 111. Section 1026.28(a) currently provides that State law requirements that are inconsistent with the requirements contained in chapters 1 through 3 of TILA and the implementing provisions of Regulation Z are preempted to the extent of the inconsistency.[255] Under § 1026.28(a), a State law is inconsistent with a TILA provision if it requires a creditor to make disclosures or take actions that contradict the

[255] There are different rules regarding preemption of State laws relating to the disclosure of credit information in any credit or charge card application or solicitation that is subject to the requirements of section 127 of TILA and the correction of billing errors, but those rules are outside the scope of this rulemaking. *See* § 1026.28(a)(2), (d).

requirements of TILA. A State law contradicts a requirement of TILA if it requires the use of the same term to represent a different amount or a different meaning than TILA, or if it requires the use of a term different from that required in TILA to describe the same item. A creditor, State, or other interested party may request the Bureau to determine whether a State law requirement is inconsistent, and if the Bureau makes such a determination a creditor may not make disclosures using the inconsistent term or form.[256] The specific procedures for requesting a State law preemption determination are set forth in § 1026.28(c) and appendix A to Regulation Z. Appendix A states, among other things, that the Bureau reserves the right to reverse a determination for any reason bearing on the coverage or effect of State or Federal law.

Current Regulation Z commentary provides further guidance on the TILA preemption rules. Comment 28(a)-2 includes examples of State laws that would be preempted (*e.g.*, a State law requiring use of the term “finance charge” but defining the term to include fees that TILA excludes, or to exclude fees that TILA includes). Comment 28(a)-3 explains that State law requirements calling for disclosure of items not covered by TILA or that require more detailed disclosures generally do not contradict the TILA requirements, provides examples of State laws that would not be preempted, and gives guidance as to whether a State law requiring itemization of the amount financed would be preempted. Comment 28(a)-4 explains that a creditor, prior to a preemption determination, may either (1) give the State disclosures or (2) apply the preemption standards to a State law, conclude that it is inconsistent, and choose not to give the State-required

[256] TILA section 111(a)(2) and § 1026.28(b) generally permit a creditor, State, or other interested party to request that the Bureau determine whether a State-required disclosure is substantially the same in meaning as a TILA disclosure, and if the Bureau makes such a determination, creditors in the State can provide the State-required disclosure in lieu of the TILA disclosure. Comment 28(b)-1 clarifies that under § 1026.28, a State disclosure can be substituted for a Federal disclosure only after a determination of substantial similarity. State exemptions are addressed in more detail under § 1026.29 and associated commentary.

disclosures (but that no immunity is given under § 1026.28(a) for violations of State law if the creditor chooses not to make State disclosures and the Bureau later determines that the State law is not preempted). The comment also states that the Bureau will give sufficient time to creditors to revise their forms and procedures as necessary to conform with its preemption determinations. Comments 28(a)-8 through -15 discuss prior determinations made by the Federal Reserve Board prior to July 21, 2011, and recognized by the Bureau unless and until the Bureau makes and publishes any contrary determinations, to preempt certain State laws. For example, comment 28(a)-15 states that in Wisconsin, disclosure of the annual percentage rate under the particular State law referenced in the comment is preempted, because while the statute refers to "annual percentage rate," it requires disclosure of a different amount than under TILA.

Section 18 of RESPA and current Regulation X § 1024.13 provide that State laws that are inconsistent with RESPA or Regulation X are preempted to the extent of the inconsistency. 12 U.S.C. 2616; 12 CFR 1024.13.[257] RESPA and Regulation X do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency. *Id.* Upon request by any person, the Bureau is authorized to determine whether such inconsistencies exist, and the Bureau may not determine that any State law is inconsistent with any provision of RESPA if the Bureau determines that such law or regulation gives greater protection to the consumer. 12 CFR 1024.13(b). In making this determination, the Bureau must consult with "appropriate Federal agencies." *Id.*; *see also* 12 U.S.C. 2616. Section 1024.13(c) sets forth the process by which the Bureau makes a preemption determination. Unlike Regulation Z, Regulation X does

[257] The Bureau issued a final rule on July 10, 2013 that redesignated current § 1024.13 as § 1024.5(c), effective January 10, 2014, but the redesignation does not change the substance of the provision. 78 FR 44686, 44689 (July 24, 2013).

not list any State laws preempted by RESPA, and the Bureau is not aware of any.

The preemption provisions in TILA and RESPA and their implementing regulations thus contain similar language as far as scope of the preemption (*i.e.*, in both cases State laws generally are preempted only "to the extent of the inconsistency"), but include different authority and procedures for determining whether State laws are preempted. For example, unlike Regulation X, § 1026.28 provides a regulatory standard for determining "inconsistency" (*i.e.*, disclosures or actions that contradict Federal law requirements) along with detailed commentary. RESPA, but not TILA, requires the preemption determination to be made by the Bureau in consultation with other appropriate Federal agencies. Moreover, while the Regulation Z provision addresses the relationship between Federal and State laws governing credit transactions, § 1024.13 refers to laws regarding settlement practices.

As stated previously, section 1032(f) of the Dodd-Frank Act requires the Bureau to propose rules and forms that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. In addition, the Dodd-Frank Act amended sections 105(b) of TILA and 4(a) of RESPA, respectively, to require the integration of those disclosure requirements. However, the Dodd-Frank Act did not specify whether the TILA or the RESPA State law preemption provision applies to the provision of the integrated mortgage disclosures. In order to meet the Dodd-Frank Act's mandate, the proposed rule must reconcile the differences regarding these State law preemption regimes.

The Bureau proposed to require that the State law preemption provisions of Regulation Z, § 1026.28, apply to any State law preemption question arising with respect to the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors), and §§ 1026.19(e) and (f), 1026.37, and 1026.38. To effectuate this change, the Bureau proposed two modifications to § 1026.28 and its associated commentary to reconcile differences regarding the State law preemption regimes of Regulation X and Regulation Z to meet the Dodd-Frank Act's mandate to integrate the mortgage loan disclosure requirements under TILA and RESPA.[258] First, the proposed rule would have modified § 1026.28(a) to provide that a determination of whether a State law is inconsistent with the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) and proposed §§ 1026.19(e) and (f), 1026.37, and 1026.38 would be made in accordance with § 1026.28 and not Regulation X § 1024.13. Second, the proposed rule would have added text to comment 28(a)-1 providing that, to the extent applicable to a transaction subject to § 1026.19(e) and (f), any reference to "creditor" in § 1026.28 included a creditor, a mortgage broker, or a closing agent, as applicable. This change coincided with the proposed alternative of § 1026.19(f)(1) that would have permitted the settlement agent to deliver the closing disclosure in place of the creditor. The Bureau stated that if this alternative were not adopted, it would not adopt the proposed addition of the reference to the closing agent to comment 28(a)-1. As described above in the section-by-section analysis of § 1026.19(f)(1), the Bureau is finalizing this alternative substantially as proposed, and as explained below, is adopting comment 28(a)-1 with a minor modification for clarity.

Several industry trade association commenters stated that preemption determinations under § 1026.28 should be made after consulting with other Federal agencies, as is provided

[258] *See* sections 1032(f), 1098, and 1100A of the Dodd Frank Act. 12 U.S.C. 5532, 2603(a), and 1604(b), respectively.

under Regulation X in § 1024.13. As stated above, the Bureau must reconcile the differences between the two State law preemption regimes of RESPA and TILA. The two regimes are inconsistent with respect to the requirement under RESPA that the Bureau "consult with appropriate Federal agencies." 12 U.S.C. 2616. As the Bureau stated in the proposal, there are certain transactions subject to TILA, but not RESPA, for which the integrated mortgage disclosures must be delivered under the proposed rule. Pursuant to § 1026.19(e) and (f), the proposed rule covers all closed-end consumer credit transactions secured by real property, other than reverse mortgages. Some of these transactions are not subject to RESPA (*i.e.*, if they are not a federally related mortgage loan as defined in Regulation X § 1024.2), but consumers in such transactions will receive integrated mortgage disclosures containing certain content mandated by RESPA. As such, in practice the statutory integrated disclosure requirements of TILA will apply to more transactions covered by § 1026.19(e) and (f) than those subject to RESPA. This may create confusion as to which preemption provision controls were a State law preemption question to arise with respect to the RESPA-mandated content on the integrated mortgage disclosures.

For these reasons, the Bureau has determined that the preemption regime under TILA section 111, as implemented by Regulation Z in § 1026.28, without a requirement that the Bureau consult with other Federal agencies, is the most appropriate for the disclosure requirements Congress mandated the Bureau to integrate under sections 1032, 1098, and 1100A of the Dodd-Frank Act. Accordingly, the Bureau is adopting the modifications to § 1026.28 and comment 28(a)-1 as proposed, with a change to the reference of "closing agent" to "settlement agent" to conform to the usage in the integrated disclosure requirements for clarity. The Bureau adopts these modifications pursuant to the authority under TILA section 105(a) and RESPA section 19(a), as described in the proposal.

Section 1024.5(c) will continue to apply to State law preemption questions arising with respect to all other aspects of RESPA and Regulation X, including the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors.[259]

Section 1026.29 State Exemptions

The Bureau proposed two substantive modifications to the commentary to § 1026.29, in addition to relabeling some of the section numbering and lettering, to reconcile differences between TILA and RESPA provisions with respect to the Bureau's authority to grant State exemptions from disclosure provisions. TILA has several provisions that permit the Bureau to grant State exemptions from certain TILA disclosure provisions. Section 111(a)(2) of TILA allows the Bureau, upon its own motion or upon the request of any creditor, State, or other interested party that is submitted in accordance with procedures prescribed in regulations of the Bureau, to determine whether any disclosure required under any State law is substantially the same in meaning as a disclosure required under TILA. 15 U.S.C. 1610(a)(2). If the Bureau makes such a determination, TILA section 111(a)(2) provides that creditors located in that State may make such disclosure in compliance with such State law in lieu of the TILA disclosure, except that (1) the annual percentage rate and finance charge must be disclosed as required by section 122 of TILA, and (2) State-required disclosures may not be made in lieu of the high-cost mortgage disclosures under section 129 of TILA. Section 123 of TILA allows the Bureau by regulation to exempt any class of credit transactions within any State from the requirements of chapter 2 of TILA (Credit transactions) if the Bureau determines that the law of the State

[259] The provisions related to state law preemption questions under Regulation X § 1024.13 were moved to § 1024.5(c) effective on January 10, 2014. *See* 78 FR 44686, 44689 (July 24, 2013).

subjects the class of transactions to requirements substantially similar to those imposed under chapter 2 of TILA, and that there is adequate provision for enforcement.[260] 15 U.S.C. 1633.

Regulation Z § 1026.29 and appendix B to Regulation Z implement the TILA State exemption provisions.[261] Pursuant to § 1026.29(a), a State may apply to the Bureau to exempt a class of transactions within the State from the requirements of chapter 2 (Credit transactions) or chapter 4 (Credit billing) of TILA and the corresponding provisions of Regulation Z. The Bureau shall grant an exemption if it determines that (1) the State law is substantially similar to the Federal law or, in the case of chapter 4 of TILA, affords the consumer greater protection than the Federal law, and (2) there is adequate provision for enforcement. Comment 29(a)-2 clarifies that State law is "substantially similar" for purposes of § 1026.29(a) if the State statutory or regulatory provisions and State interpretations of those provisions are generally the same as TILA and Regulation Z. Comment 29(a)-3 clarifies that, generally, there is adequate provision for enforcement if appropriate State officials are authorized to enforce the State law through procedures and sanctions comparable to those available to Federal enforcement agencies. Comment 29(a)-4 states that the Bureau recognizes certain TILA exemptions granted by the Board to Maine, Connecticut, Massachusetts, Wyoming, and Oklahoma prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Comment 29(a)-4.i through -4.v currently provides, in relevant part, that credit transactions in these five States that are subject to the State consumer credit codes or truth in lending acts enumerated in such

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[260] Section 171(b) of TILA also addresses State exemptions and contains nearly identical language to section 123, but section 171(b) applies with respect to TILA chapter 4 (credit billing), which is not affected by this rulemaking. 15 U.S.C. 1661j(b).

[261] As noted earlier, § 1026.28(b) generally permits a creditor, State, or other interested party to request that the Bureau determine whether a State-required disclosure is substantially the same in meaning as a TILA disclosure, and if the Bureau makes such a determination, creditors in the State can provide the State-required disclosure in lieu of the TILA disclosure. Comment 28(b)-1 clarifies that under § 1026.28, a State disclosure can be substituted for a Federal disclosure only after a determination of substantial similarity.

comment are exempt from the requirements of chapter 2 of TILA, which sets forth, among other provisions, the disclosure requirements for closed-end mortgages. The specific procedures for requesting a State exemption are set forth in § 1026.29(c) and appendix B to Regulation Z. Appendix B states, among other things, that the Bureau reserves the right to revoke an exemption if at any time it determines that the standards required for an exemption are not met.

Unlike TILA, RESPA does not contain a State exemption provision for credit transactions subject to RESPA. Rather, as discussed above with respect to § 1026.28, section 18 of RESPA[262] and Regulation X § 1024.13 provide that State laws that are inconsistent with RESPA or Regulation X are preempted to the extent of the inconsistency.

As stated above, sections 1032(f), 1098, and 1100A of the Dodd-Frank Act require the Bureau to propose for public comment, and publish final rules and forms that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. However, the Dodd-Frank Act did not address a number of inconsistencies between TILA and RESPA that affect the provision of the integrated mortgage disclosures, including inconsistent provisions regarding the application of State law. In order to meet the Dodd-Frank Act's mandate, the final rule must reconcile the State exemption provisions. The Bureau proposed to reconcile these differences between Regulation X and Regulation Z to meet the Dodd-Frank Act's mandate to integrate the mortgage loan disclosure requirements under the two statutes.[263]

First, proposed revised comment 29(a)-2 would have modified the guidance regarding the "substantially similar" standard set forth in § 1026.29(a)(1) (*i.e.*, one of the two preconditions to

[262] 12 U.S.C. 2616.
[263] *See* sections 1032(f), 1098, and 1100A of the Dodd Frank Act. 12 U.S.C. 5532, 2603(a), and 1604(b), respectively.

the granting of an exemption). Proposed revised comment 29(a)-2 would have clarified that, in order for transactions that would otherwise be subject to the integrated disclosures required by § 1026.19(e) and (f) to be exempt from those disclosure requirements, the State statutory or regulatory provisions and State interpretations of those provisions must require disclosures that are generally the same as those prescribed by § 1026.19(e) and (f), in the forms prescribed by §§ 1026.37 and 1026.38. In effect, in order for an existing State exemption to be maintained, the State's law must require disclosures that are generally the same as the integrated disclosures, including the RESPA content.

Second, proposed revised comment 29(a)-4 would have stated that, although RESPA and Regulation X do not provide procedures for State exemptions, for transactions subject to § 1026.19(e) and (f), compliance with the requirements of §§ 1026.19(e) and (f), 1026.37, and 1026.38 satisfies the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors). Furthermore, the proposed revised comment would have stated that if the transaction is subject to a previously-granted State exemption, then compliance with the requirements of any State laws and regulations incorporating the requirements of §§ 1026.19(e) and (f), 1026.37, and 1026.38 likewise satisfies the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors). Thus, in Maine, Connecticut, Massachusetts, Oklahoma, and Wyoming, creditors, mortgage brokers, and settlement agents, as applicable, would have, under the proposal, been able to satisfy sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) through compliance with State law so long as the "substantially similar" State statutory and regulatory provisions (*i.e.*, the State consumer codes or truth in lending acts enumerated in comment 29(a)-4.1 through -4.v, as applicable) expressly mandated delivery of the integrated mortgage disclosures required by the Dodd-Frank Act and implemented by this final rule.

The Bureau did not receive any comments on the proposed modifications to the commentary related to State exemptions. The Bureau understands these changes require some of the five States that were previously granted State exemptions under 12 CFR 226.29, the predecessor to § 1026.29, to change their laws and/or regulations, which may be a lengthy process because, to the extent the "substantially similar" State laws and regulations underlying the TILA State exemptions do not currently require the integrated disclosures mandated by the Dodd-Frank Act (specifically, the portions mandated by RESPA), there is a gap in these States' current statutory and regulatory regimes that must be filled in order to maintain the State exemptions. As such, the Bureau solicited comment on the amount of time that will be needed for these States to change their laws and/or regulations. The Bureau did not receive any comment on the amount of time that will be needed for those States to change their laws and/or regulations. However, two GSE commenters stated that the Bureau should impose a reasonable implementation period for the final rule that will permit the amendment of State laws and/or regulations. The Bureau believes that the States identified in proposed comments 29(a)-2 and -4 will be able to change their laws and/or regulations prior to the effective date of this final rule, which is discussed below in part VI. Accordingly, the Bureau is adopting the modifications to comments 29(a)-2 and -4 as proposed, pursuant to its authority under TILA section 105(a) and RESPA section 19(a) to make rules consistent with the purposes of those statutes, as described in the proposal.

Section 1026.37 Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

Proposed § 1026.37 would have set forth the required content of the integrated Loan Estimate disclosure, required by § 1026.19(e) to be provided to a consumer within three business days of the creditor's receipt of the consumer's application.

As described in the proposal, the proposed Loan Estimate would have integrated the disclosures currently provided in the RESPA GFE and the early TILA disclosure. In addition, the Loan Estimate integrates several disclosures that would otherwise be provided separately under various Federal laws. The Bureau stated in the proposal that it believed the three-page Loan Estimate, as proposed, integrates at least seven pages of disclosures. Specifically, the proposed Loan Estimate incorporated: (i) three pages of the RESPA GFE; (ii) two pages typically used for the early TILA disclosure; (iii) one page typically used for the appraisal notification provided under ECOA section 701(e); and (iv) one page typically used for the servicing disclosure provided under RESPA section 6. In addition, the proposed Loan Estimate incorporated the disclosure of: (i) the total interest percentage under TILA section 128(a)(19), which was added by section 1419 of the Dodd-Frank Act; (ii) the aggregate amount of loan charges and closing costs the consumer must pay at consummation under TILA section 128(a)(17), which was added by section 1419 of the Dodd-Frank Act; (iii) for refinance transactions, the anti-deficiency protection notice under TILA section 129C(g)(3), which was added by section 1414(c) of the Dodd-Frank Act; and (iv) the homeowner's insurance disclosure in TILA section 106(c) and § 1026.4(d)(2)(i), which is required to exclude homeowner's insurance premiums from the finance charge. In the absence of the Bureau's proposed integration of the early TILA disclosure and the RESPA GFE, some of these new disclosures would have been added to the early TILA disclosure, which potentially could have increased that disclosure's typical two pages to three pages.

The Bureau received numerous comments from industry and consumer advocacy groups generally supporting the design of the proposed integrated disclosures. For example, a large national bank commented that the proposed disclosures are a distinct improvement over those in existing regulations and that the Bureau has consolidated multiple disclosures, minimized the conflicts between existing RESPA and TILA disclosure requirements, and created forms that are more visually appealing and more understandable to the consumer than the current forms. A national consumer advocacy group commented that the proposed integrated disclosures are in many ways an improvement over existing disclosures. A community bank praised the integrated disclosures as clearer and more concise than existing disclosures and noted several areas of "commendation" in both the proposed Loan Estimate and Closing Disclosure. The FTC Staff praised the integrated disclosures, particularly their formatting and language, as more effective than the current forms in conveying key loan terms to consumers.

In contrast, the Bureau received numerous comments that were critical of the design of the proposed integrated disclosures. For example, an individual settlement agent strongly criticized the proposed integrated disclosures, opining that they were significantly more complicated than the disclosures required under existing regulations. A national trade association representing mortgage lenders commented that the proposal went beyond what was necessary to reconcile TILA, RESPA, and the changes to both statutes mandated by the Dodd-Frank Act. A national trade association representing title attorneys commented that the proposed forms were too complex to be useful for consumers and would likely require title attorneys or settlement agents to create explanatory documents, thereby increasing the number of pages provided to the consumer.

Some commenters suggested that features not included in the integrated disclosures be added. For example, a national trade association representing mortgage bankers suggested that the Loan Estimate include a trade-off chart similar to one that was on the RESPA GFE, which would compare the loan that is subject of the Loan Estimate and another loan available to the borrower from that creditor that has a different rate, points, and fees mix. The comment stated that such a chart would be preferable to the Bureau's 2012 Loan Originator Proposal, which would have required that, before a creditor or mortgage broker may impose upfront points and/or fees on a consumer, the creditor must make available to the consumer a comparable, alternative loan with no upfront discount points, origination points, or origination fees (zero-zero alternative).[264] A GSE suggested that there should be a place on the Closing Disclosure to reflect whether the consumer was closing another loan at the same time as the transaction that is the subject of the Closing Disclosure.

As discussed above in part III, the Bureau has conducted extensive consumer testing of the proposed Loan Estimate and Closing Disclosure, both on their own and in comparison to the existing RESPA GFE and RESPA settlement statement and early and final TILA disclosures. The testing reflects that consumers are able to use the integrated disclosures to understand the loan presented, compare loans when shopping, compare their estimated and actual charges, and that the integrated disclosures perform significantly better than the existing disclosures under TILA and RESPA. *See* Kleimann Testing Report at 277, 280; Kleimann Quantitative Study Report at 68-69. Moreover, the Bureau was required by the Dodd-Frank Act both to integrate the existing disclosures and to add certain new information on the integrated disclosures that the Dodd-Frank Act added to TILA. Accordingly, while the Bureau appreciates certain

[264] The Bureau did not adopt the zero-zero alternative in the 2013 Loan Originator Final Rule. 78 FR 11280 (Feb. 15, 2013).

commenters' concern that the integrated disclosures are overly complex, the Bureau has extensively tested the integrated disclosures to ensure the design and layout of the new disclosures is effective for consumers and minimizes the risk of information overload, while still including the information required by TILA and RESPA, including the new requirements added to TILA by the Dodd-Frank Act. Similarly, while the Bureau understands commenters' desire to add components to the integrated disclosures, the Bureau declines to do so given its statutory requirements to include large amounts of new information and the risk to consumers of information overload if the Loan Estimate and Closing Disclosure added still more information. Comments addressing specific parts of the integrated disclosures will be addressed in more detail in the section-by-section analysis of individual provisions.

Proposed § 1026.37 would have required that the information set forth in § 1026.37(a) through (n) be disclosed "as applicable." The Bureau also proposed comments 37-1 and -2 to provide guidance regarding proposed § 1026.37. Proposed comment 37-1 would have clarified that a disclosure that is not applicable to a particular transaction generally may be eliminated entirely. The proposed comment would have provided as an example that the disclosure required by § 1026.37(m)(3) need not be included in a transaction for which the creditor does not require homeowner's insurance. Proposed comment 37-1 would have stated that a disclosure that is not applicable to a transaction alternatively may be included but marked "not applicable" or "N/A." The proposed comment would have clarified that the adjustable payment table and adjustable interest rate information table required under proposed § 1026.37(i) and (j), respectively, are only permitted to be included in particular transactions. Proposed comment 37-2 would have directed creditors to § 1026.37(o) and its commentary for guidance on the proper format for the disclosures and permissible modifications to the format.

Several trade associations representing mortgage lenders and a national title insurance company commented that the "as applicable" standard in proposed § 1026.37 and comment 37-1 conflicted with proposed § 1026.37(o)(1)(i), which would have required the use of the proposed standard form H-24 of appendix H to Regulation Z for all federally related mortgage loans. These commenters questioned how a disclosure that was not applicable could be eliminated entirely while still using form H-24. These same commenters as well as a large bank, a document preparation company, and a law firm commented that forms that change depending on the type of the transaction, known as "dynamic forms," are difficult to program and therefore very costly to implement. These commenters requested that the Bureau instead mandate a static form. The Bureau received no public comments on proposed comment 37-2.

The Bureau believes that permitting inapplicable disclosures to be deleted is inconsistent with the proposal's intent for form H-24 to be used for all federally related mortgage loans, subject to certain limited exceptions noted in § 1026.37(o). The Bureau further believes that permitting the standard form to change for each of the myriad transaction types for which it is used could result in a Loan Estimate that is difficult for consumers to use for shopping purposes and unnecessarily costly and confusing for industry to implement.

Accordingly, the Bureau is revising § 1026.37 to delete the phrase "as applicable." Additionally, the Bureau is revising comment 37-1 to clarify that disclosures under § 1026.37 must reflect the terms of the legal obligation between the parties, and that if any information necessary for an accurate disclosure is unknown to the creditor, the disclosure must be made in good faith, based on the best information reasonably available at the time the disclosure is provided to the consumer pursuant to §§ 1026.17(c) and 1026.19(e). The revised comment also clarifies that where a disclosure is not applicable, the disclosure may not be deleted from form

H-24, unless otherwise provided under § 1026.37, and the use of “not applicable” or “N/A” for inapplicable disclosures is not permitted. The comment states that the inapplicable disclosure may be left blank, unless otherwise provided under § 1026.37. Final comment 37-1 is further revised to provide a different example of a disclosure that may be left blank pursuant to § 1026.37, specifically, the amounts required to be disclosed by § 1026.37(f)(1)(i) in a transaction for which the consumer does not pay points to the creditor to reduce the interest rate. As in the proposal, final comment 37-1 also references the adjustable payment and adjustable interest rate tables, which clarifies that the disclosures required by § 1026.37(i) and (j) may be included only where applicable to the transaction and otherwise must be excluded. Comments related specifically to the dynamic nature of these tables will be discussed as part of this section-by-section analysis of § 1026.37(i) and (j). Because it did not receive any comments on proposed comment 37-2, the Bureau is adopting comment 37-2 as proposed.

The Bureau adopts revised § 1026.37 and comment 37-1, and comment 37-2 as proposed, pursuant to its authority under TILA section 105(a), RESPA section 19(a), because the Bureau believes these provisions will promote the informed use of credit and more effective advance disclosure of settlement costs. In addition, the Bureau believes they will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions, consistent with Dodd-Frank Act section 1032(a). Furthermore, the Bureau believes they will improve consumer awareness and understanding of transactions involving residential mortgage loans and are therefore in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

37(a) General Information

The Bureau proposed § 1026.37(a), which would have combined and modified disclosures currently provided under Regulations X and Z in the Loan Estimate and would have added additional disclosures for transactions subject to proposed § 1026.19(e). For the reasons discussed below and consistent with TILA section 105(a), RESPA section 19(a), and the purposes of those statutes, the Bureau stated in the proposal that it believes that § 1026.37(a) will promote the informed use of credit and more effective advance disclosure of settlement costs. In addition, the Bureau stated that it believed proposed § 1026.37(a) will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions, consistent with Dodd-Frank Act section 1032(a). Furthermore, the Bureau stated it believes that § 1026.37(a) will improve consumer awareness and understanding of transactions involving residential mortgage loans and is therefore in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau received many comments related to the various provisions of § 1026.37(a) which will be discussed in detail below in their respective sections.

37(a)(1) Form Title

Although the Dodd-Frank Act requires the Bureau to combine the TILA and RESPA mortgage disclosures that are currently provided to consumers within three business days after application, the Dodd-Frank Act does not prescribe a title for the integrated form. Under § 1024.2(b) of Regulation X, the form providing consumers with the RESPA GFE of settlement charges they are likely to incur is called the "Good Faith Estimate" or "GFE." Regulation Z does not prescribe a name for the early TILA disclosure required by § 1026.19(a)(1), although comment 17(a)(1)-5.ix permits the creditor to provide "[a] brief caption identifying the disclosures" and provides as examples of acceptable titles, "Federal Truth in Lending Disclosures" and "Real Estate Loan Disclosures."

Proposed § 1026.37(a)(1) would have required the creditor to use the term "Loan

Estimate" as the title of the integrated disclosures provided pursuant to § 1026.19(e). The Bureau stated its belief in the proposal that the adoption of a standardized form name may eliminate confusion for consumers seeking to compare estimates for different loans and thereby promote the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions, consistent with Dodd-Frank Act section 1032(a). In addition, the Bureau stated that it believed the use of standard terminology for the integrated disclosures will facilitate compliance for industry, which is a purpose of this rulemaking under Dodd-Frank Act sections 1098 and 1100A. The Bureau did not receive any comments regarding proposed § 1026.37(a)(1). Because the Bureau continues to believe that a standardized form name will effectuate the purposes of TILA and RESPA and facilitate compliance, it is adopting § 1026.37(a)(1) as proposed, based on the authority described in the proposal and above.

37(a)(2) Form Purpose

Proposed § 1026.37(a)(2) would have required the creditor to include a statement regarding one of the primary uses of the Loan Estimate for consumers, which is to compare it with the Closing Disclosure to verify the loan terms and costs. Specifically, proposed § 1026.37(a)(2) would have required the creditor to provide the following statement at the top of all Loan Estimates, "Save this Loan Estimate to compare with your Closing Disclosure."

In the proposal, the Bureau stated its belief that the proposed language may benefit consumers and promote the informed use of credit by encouraging consumers to use the Loan Estimate as a tool to help them readily identify any changes to the loan transaction or costs that may have occurred between issuance of the initial Loan Estimate and the Closing Disclosure.

The proposal noted that requiring creditors to disclose the purpose for the Loan Estimate and related disclosures is not a new requirement, and that appendix C to Regulation X currently requires specific language regarding the purpose of the RESPA GFE.[265] The Bureau stated that it believed that while the Bureau's proposed language differs from that prescribed by HUD, the disclosure in proposed § 1026.37(a)(2) accomplishes the same goal in a clearer and more succinct manner. The Bureau stated its belief that this disclosure will promote the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions, consistent with Dodd-Frank Act section 1032(a).

The Bureau did not receive any comments on proposed § 1026.38(a)(2) and continues to believe disclosing the form purpose will benefit consumers in the ways discussed above. Accordingly, the Bureau is adopting § 1026.37(a)(2) as proposed, based on the authority stated in the proposal and above.

37(a)(3) Creditor

TILA section 128(a)(1) requires disclosure of the "identity of the creditor required to make [the] disclosure." 15 U.S.C. 1638(a)(1). Regulation Z § 1026.18(a) implements TILA section 128(a)(1) and requires for each transaction the identity of the creditor making the disclosure. HUD imposed a similar requirement in appendix C to Regulation X, requiring the name and contact information for the "loan originator."

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[265] Appendix C to Regulation X requires the following statement on the RESPA GFE under the heading "Purpose": "This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us."

The Bureau proposed § 1026.37(a)(3) pursuant to TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), which mirrors § 1026.18(a) and would have required the name of the creditor making the disclosure. The Bureau stated in the proposal that it believed that by allowing the consumer to identify the name of the creditor providing the Loan Estimate, this disclosure will promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions.

Proposed comment 1026.37(a)(3)-1 would have cross-referenced § 1026.17(d) and comment 17(d)-1 and clarified that, in transactions with multiple creditors, only the creditor making the disclosure must be identified. Proposed comment 37(a)(3)-2 would have stated that, in transactions where the loan is originated by a mortgage broker, the name of the creditor, if known, must still be provided even if the mortgage broker provides the disclosure to the consumer.

The Bureau did not receive any public comments on proposed § 1026.37(a)(3). Because the Bureau continues to believe that disclosure of the identity of the creditor making the disclosure will, for the reasons discussed, effectuate the purposes of TILA and RESPA, it is adopting § 1026.37(a)(3) and its associated commentary substantially as proposed, based on the authority described in the proposal and above. The Bureau is revising comment 37(a)(3)-2 for clarity and to provide additional guidance for the mortgage broker if the name of the creditor is not known at the time the Loan Estimate is completed.

37(a)(4) Date Issued

Appendix C to Regulation X requires creditors to provide the date of the RESPA GFE. Proposed § 1026.37(a)(4) would have mirrored this requirement by mandating disclosure of the date the Loan Estimate is mailed or delivered to the consumer. Proposed comment 1026.37(a)(4)-1 would have clarified that the "date issued" is the date the creditor delivers the Loan Estimate to the consumer and is not affected by the creditor's method of delivery.

The Bureau proposed this requirement pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because, as stated in the proposal, the Bureau believed disclosure of the date the Loan Estimate is issued will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively, by enabling consumers to compare the Loan Estimate with any revised Loan Estimates that may be issued. In addition, the Bureau stated in the proposal that it believed this comparison will enable consumers to identify changes in loan terms and costs and thereby understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a).

The Bureau did not receive any comments on proposed § 1026.37(a)(4). The Bureau continues to believe mandating disclosure of the date the Loan Estimate is delivered will, for the reasons discussed, effectuate the purposes of both TILA and RESPA. Accordingly, the Bureau is adopting § 1026.37(a)(4) as proposed, based on the authority described in the proposal and above. The Bureau is revising comment 37(a)(4)-1 to increase clarity by providing examples of the date disclosed. The Bureau is adding new comment 37(a)(4)-2 to provide guidance on the date disclosed when a transaction involves a mortgage broker.

37(a)(5) Applicants

Appendix C to Regulation X requires disclosure of the name of the applicants for the mortgage loan transaction. Similarly, pursuant to TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), proposed § 1026.37(a)(5) would have required creditors to disclose the name and mailing address of the applicants for the loan transaction. The Bureau stated in the proposal that it believed that by enabling consumers to confirm that the Loan Estimate is intended for them, this disclosure will promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. Proposed comment 37(a)(5)-1 would have clarified that where there are multiple consumers, the names and addresses of all consumers for the mortgage loan must be disclosed on the form and that if the form cannot accommodate the names of all the consumers, the creditor may attach to the back of the form a separate page listing the remaining consumers.

Several national trade associations representing mortgage lenders requested clarification regarding the scope of the term "consumer" under proposed § 1026.37(a)(5). The commenters noted that the definition of consumer in a rescindable transaction includes non-applicant co-owners who have the right to cancel and recommended that individuals who are not applicants but who have the right to cancel need not be disclosed, because doing so would be onerous and not fit in the space provided in form H-24. Several national trade associations representing mortgage lenders also noted that where there are multiple consumers, proposed comment 37(a)(5)-1 would have explained that § 1026.37(a)(5) required disclosure of each consumer's address, even though proposed comment 17(d)-2 would have stated that delivery of the disclosures may be made only to consumers with primary liability on the obligation. Those commenters suggested that only the addresses of consumers to whom the Loan Estimate will be delivered should be disclosed.

With respect to consumers in rescindable transactions, the Bureau understands that disclosing the names of non-applicant co-owners could be unnecessarily difficult, particularly because at the time the Loan Estimate is delivered, a title search likely will not have been completed and thus, the creditor would not know with certainty the names of non-applicant co-owners. Further, listing non-applicant co-owners with rights of rescission on the Loan Estimate has little benefit for those co-owners given that they will typically not receive a copy of the Loan Estimate. Accordingly, the Bureau is revising § 1026.37(a)(5) to require disclosure of the name and mailing address only of the consumer applying for the credit. As discussed in the section-by-section analysis of § 1026.17(d), the Bureau is finalizing amendments to comment 17(d)-2 that clarify that § 1026.2(a)(11) provides a specific definition of "consumer" for purposes of rescission under §§ 1026.15 and 1026.23 that would include a non-applicant co-owner of a principal dwelling, and provides guidance regarding the provision of disclosures to such consumers. Regarding the proposal's requirement to list each consumer's address, the Bureau believes that listing the addresses of consumers to whom the Loan Estimate is not delivered because they are not primarily liable is unnecessary, and is therefore revising comment 37(a)(5)-1 accordingly.

For the aforementioned reasons, the Bureau continues to believe that disclosure of the name and mailing address of the applicant will effectuate the purposes of TILA and RESPA and thus, is adopting § 1026.36(a)(5) as revised to require disclosure of the name and mailing address of the consumer applying for the credit, pursuant to the authority described in the proposal and above. The Bureau is adopting comment 37(a)(5)-1 with a revision to state that disclosure of a mailing address is required only for consumers to whom the Loan Estimate will be delivered.

37(a)(6) Property

Appendix C to Regulation X requires at the top of the RESPA GFE the "address or location of the property" for which the financing is sought. Appendix A to Regulation X requires the RESPA settlement statement to include the street address of the property being sold or if there is no street address, a brief legal description or other location of the property. Appendix A to Regulation X further requires disclosure of a zip code on the RESPA settlement statement in all cases. The Bureau proposed to use its authority in TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act to impose a similar requirement for the Loan Estimate required by § 1026.19(e). The Bureau stated in the proposal that it believed that, by providing the consumer with basic information about the property that is the subject of the loan transaction, this disclosure will promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions.

Accordingly, proposed § 1026.37(a)(6) would have required the creditor to disclose the street address or location of the property that secures the transaction that is the subject of the Loan Estimate. Proposed comment 37(a)(6)-1 would have instructed creditors to provide a legal description or other locator for the property in cases where there is no street address. The proposed comment also would have clarified that a zip code would be required in all instances.

Several national trade associations representing mortgage lenders commented that requiring disclosure of the property address is problematic for consumers seeking preapproval for a transaction for which the property address is not yet known. Several national trade associations representing mortgage lenders and a document preparation company commented that when disclosing an alternative property address as described by proposed comment 37(a)(6)-1, sample form H-24 does not contain enough space to include a legal description of the property given that legal descriptions are often paragraphs long. A GSE requested in an ex parte meeting that the Bureau clarify how to disclose personal property that secures a transaction.

With respect to preapprovals, the Bureau does not believe that requiring disclosure of a property address in such a situation is problematic. While the property address is one of the six elements of an application under § 1026.2(a)(3)(ii) as finalized, without which the requirement to deliver a Loan Estimate is not triggered, a creditor is permitted to deliver a Loan Estimate without collecting a property address from the consumer. In that case, the Loan Estimate would be subject to § 1026.19(e) and the creditor would be presumed to have collected the address, as described in comment 19(e)(3)(iv)(A)-3. As further described by that comment, the subsequent receipt of a property address would not be considered a changed circumstance pursuant to § 1026.19(e)(3)(iv)(A) or (B). Under proposed § 1026.37(a)(6), the creditor would not have been required to disclose the street address, as would have been clarified by proposed comment 37(a)(6)-1. Comment 37(a)(6)-1 would have stated, however, that a zip code is required in all instances. In addition, to the extent that a creditor does not want to provide a Loan Estimate for a preapproval before a property address is known, the creditor could instead deliver a written estimate of terms or costs specific to that consumer, provided that the written estimate contained the disclaimer required by § 1026.19(e)(2)(ii). Accordingly, the Bureau believes § 1026.37(a)(6) does not need to be revised to address preapprovals. However, to provide additional flexibility for creditors to use the Loan Estimate for preapprovals where the property address is unknown, the Bureau is revising comment 37(a)(6)-1 to state that while the disclosure of a zip code is required in all instances, the creditor may disclose multiple zip codes if the consumer is investigating home purchase opportunities in multiple zip codes.

In response to the commenters' concerns about disclosing a legal description of real property, the Bureau understands that a legal description would be unlikely to fit in the space provided for the disclosure required by § 1026.37(a)(6) and has revised comment 37(a)(6)-1 to delete the reference to a legal description. With respect to disclosing personal property, the Bureau recognizes that personal property may, in some cases, also secure a transaction. Accordingly, the Bureau is adding comment 37(a)(6)-2 to address the disclosure of personal property. The Bureau also believes additional clarity regarding the disclosure requirements will facilitate compliance for industry.

For the reasons stated above, and pursuant to the authority stated in the proposal and above, the Bureau is adopting § 1026.36(a)(6) substantially as proposed, but with modifications to increase clarity regarding the information to be disclosed. The Bureau is revising § 1026.36(a)(6) to require disclosure of the address, including the zip code, of the property that secures or will secure the transaction, or if the address is unavailable, the location of such property including a zip code. The Bureau is further revising comment 37(a)(6)-1 to delete the reference to a legal description, to provide for the disclosure of multiple zip codes, and to clarify that a creditor complies with § 1026.37(a)(6) by disclosing a complete address for purposes of the U.S. Postal Service. The Bureau is adding comment 37(a)(6)-2 which clarifies that where personal property secures a transaction, a description of the personal property may be disclosed pursuant to § 1026.37(a)(6) to the extent that it fits in the space provided for this disclosure on form H-24. Comment 37(a)(6)-2 explains, however, that the creditor is not permitted to add additional pages to the Loan Estimate to disclose personal property. The Bureau is concerned that adding an additional page to list personal property may risk information overload to the consumer and believes that such risk outweighs the benefit of such disclosure, given its comparatively lesser importance to a description of the real property that secures the transaction. Personal property that secures a credit transaction would also be disclosed on the Closing Disclosure pursuant to § 1026.38(l)(6). The Bureau is further adding comment 37(a)(6)-3 to provide guidance on a transaction secured by more than one property. The Bureau adopts the revision to comment 37(a)(6)-1 and new comments 37(a)(6)-2 and -3 pursuant to its authority in TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act.

37(a)(7) Sale Price

Proposed § 1026.37(a)(7)(i) would have required disclosure of the contract sale price for the property identified in § 1026.37(a)(6). For transactions that do not involve a seller, proposed § 1026.37(a)(7)(ii) would have required disclosure of the estimated value for the property identified in § 1026.37(a)(6). The disclosure of the contract sale price and estimated property value, as applicable, is a new requirement, which the Bureau proposed pursuant to its authority under TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act for transactions subject to proposed § 1026.19(e). The Bureau stated in the proposal that it believed that including the contract sales price or estimated property value in the Loan Estimate will help promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions by ensuring that consumers have in a single location all the information needed to decide whether to enter into a legal obligation. Proposed comment 37(a)(7)-1 would have provided guidance regarding the requirement to provide the estimated value of the property in transactions where there is no seller.

A regional bank commented that even in transactions where there is a seller, the sale price of the property may not be known at the time the Loan Estimate is delivered, especially because a sales contract is not one of the elements of an application, as defined in § 1026.2(a)(3), that triggers delivery of the Loan Estimate. A national trade association representing mortgage lenders requested guidance on which appraisal or valuation to use for an estimated property value where the creditor has obtained multiple appraisals or valuations but has not yet decided which one to use during underwriting. A GSE requested guidance in an ex parte meeting on whether to disclose the value of personal property in transactions where such property is valued separately from real property.

With respect to the comment that the sale price of the property may not be known, the Bureau recognizes that there may be transactions that involve a seller where the sale price of the property is not yet known at the time the Loan Estimate is delivered. Accordingly, the Bureau is revising proposed comment 37(a)(7)-1 to clarify that disclosure of an estimated sales price in transactions that involve a seller where the contract sale price is not yet known is permissible if it is the estimated property value used by the creditor in making the disclosures in the Loan Estimate. For example, if the creditor has issued disclosures with origination charges based on a particular loan-to-value ratio, the creditor should disclose a sale price that it used to determine that loan-to-value ratio. With respect to the comment that a creditor may not know which of multiple appraisals it obtained it will use for underwriting the transaction, the Bureau recognizes that proposed § 1026.37(a)(7) did not address which valuation to disclose in this circumstance and is further revising comment 37(a)(7)-1 to state that where a creditor has obtained multiple appraisals or valuations but has not yet decided which one to use, a creditor may disclose any appraisal or valuation it reasonably believes it may use in underwriting the transaction.

With respect to personal property, the Bureau recognizes that proposed § 1026.37(a)(7) did not address how to disclose personal property that may be part of the sale price of a transaction. The Bureau is adopting comment 37(a)(7)-2 to provide that where personal property is separately valued from real property, only the value of the real property should be disclosed pursuant to § 1026.37(a)(7). Comment 37(a)(7)-2 further clarifies that where personal property is included in the sale price of the real property, § 1026.37(a)(7) permits disclosure of the aggregate price without any reduction for the appraised or estimated value of the personal property.

Because the Bureau continues to believe that disclosure of the contract sale price or estimated property value will effectuate the purposes of TILA and RESPA, it is adopting § 1026.37(a)(7)(i) and (ii) substantially as proposed with minor revisions for clarity, based on the legal authority described in the proposal and above. For the reasons discussed, the Bureau is adopting comment 37(a)(7)-1 as revised and is adopting comment 37(a)(7)-2, pursuant to its authority under TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act.

37(a)(8) Loan Term

Existing appendix C to Regulation X requires the loan originator to disclose the loan term as part of the "Summary of Your Loan" disclosure. Regulation Z does not have a similar requirement, although TILA provides for such a disclosure. TILA section 128(a)(6) requires disclosure of the "number, amount, and due dates or period" of periodic payments which, in effect, makes disclosure of the loan term a statutory requirement. Section 1026.18(g) implements TILA section 128(a)(6) for non-mortgage transactions, but there is no corresponding disclosure requirement for mortgage loan transactions in existing § 1026.18(s). In the proposal, the Bureau stated its intent to implement TILA section 128(a)(6) by requiring disclosure of the loan term for mortgages in proposed § 1026.37(a)(8). Proposed § 1026.37(a)(8) essentially would have mirrored appendix C to Regulation X and would have required the creditor to disclose the term to maturity of the credit.

The Bureau proposed § 1026.37(a)(8) pursuant to its authority under TILA section

105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act to implement TILA section 128(a)(6). The Bureau stated in the proposal that it believed disclosing the loan term will help promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. The Bureau noted that the prototype mortgage disclosures used at the Bureau's consumer testing displayed the loan term expressed in years, and consumers were able to understand and evaluate easily the term to maturity. The Bureau stated in the proposal that it believed that this unit of time provides a frame of reference to consumers that they use more regularly and that is easier to understand than months, which may result in large numbers that are unfamiliar to consumers, such as 180 or 360 months. The Bureau stated that, accordingly, it proposed § 1026.37(a)(8), which would have required the loan term to be expressed in years. The Bureau stated in the proposal that it understood from industry feedback provided in connection with the Bureau's stakeholder outreach that some adjustable rate loans may be structured so that the periodic principal and interest payment is fixed such that increases in the interest rate cause increases of the loan term instead of the periodic payment. The Bureau stated that, accordingly, it proposed comment 37(a)(8)-1, which would have provided guidance regarding compliance with the requirement of proposed § 1026.37(a)(8) if the term to maturity is adjustable under the terms of the legal obligation.

Several national trade associations representing mortgage lenders and several document preparation companies commented that neither proposed § 1026.37(a)(8) nor its accompanying commentary provided guidance on how to disclose loan terms that were not whole years, such as a term of 185 months. Further, two GSEs commented that identifying the term to maturity of the transaction was confusing in the case of a "construction-to-permanent" transaction which has two distinct transaction phases. The commenters requested guidance on whether proposed § 1026.37(a)(8) requires disclosure of the term of the two phases combined or of the permanent phase only and suggested that only the permanent loan term be disclosed.

To address the commenters' requests for guidance regarding how to disclose loan terms that are not whole years, the Bureau is revising § 1026.37(a)(8) and adopting new comment 37(a)(8)-1. Revised § 1026.37(a)(8) requires disclosure of the term stated in years or months, or both, as applicable and comment 37(a)(8)-1.i clarifies that where the term to maturity of the credit transaction is 24 months or more but does not equate to a number of whole years, § 1026.37(a)(8) requires disclosure of the number of whole years in the term to maturity followed by the designation "yr.," and then the remaining number of months, followed by the designation "mo." For example, if the term to maturity of the transaction is 185 months, the correct disclosure would be "15 yr. 5 mo." Comment 37(a)(8)-1.ii further clarifies that, if the term to maturity does not equal a whole number of years and is less than 24 months, the disclosure required is the number of months, and provides additional examples.

With regard to the comment suggesting that only the permanent phase of a construction-to-permanent loan should be required to be disclosed, the Bureau notes that existing § 1026.17(c)(6)(ii) and its accompanying commentary address how to disclose construction-to-permanent transactions. That provision provides that "[w]hen a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction." Accordingly, the disclosure required by § 1026.37(a)(8) would be the term of the combined phases if the construction-to-permanent transaction were disclosed as one transaction or the term of the individual phase, if disclosed as two transactions. The Bureau notes that the amendments to appendix D to Regulation Z in this final rule, as described below, provide additional guidance regarding the disclosure of construction-to-permanent transactions.

The Bureau continues to believe that disclosing the loan term will, for the reasons discussed, effectuate the purposes of TILA and RESPA. Accordingly, based on the authority described in the proposal and above, the Bureau is adopting § 1026.37(a)(8) as revised. The Bureau did not receive any comments regarding proposed comment 37(a)(8)-1 and is adopting that comment substantially as proposed, with minor modifications for clarity, and renumbered as comment 37(a)(8)-2. For the reasons described above, the Bureau adopts new comment 37(a)(8)-1 pursuant to its authority under TILA sections 105(a) and 128(a)(6), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act.

37(a)(9) Purpose

Neither Regulation Z nor Regulation X currently requires disclosure of the purpose of the loan. With the number of loan products available on the market, some of which are targeted for a particular purpose, the Bureau stated its belief in the proposal that inclusion of this information on the Loan Estimate will promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. Accordingly, the Bureau proposed to use its authority under TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act to require creditors to disclose the intended purpose of the extension of credit.

Under proposed § 1026.37(a)(9), the creditor would have been required to disclose as the purpose of the loan one of the following: (1) purchase; (2) refinance; (3) construction; or (4) home equity loan. Proposed comment 37(a)(9)-1 would have provided general guidance on identifying the most accurate loan purpose and would have clarified that, in disclosing the loan purpose, the creditor must consider all relevant information available to the creditor at the time of the disclosure and that, if there is uncertainty, the creditor may rely on the consumer's stated purpose. In the proposal, the Bureau sought comment on whether additional loan purposes should be added to proposed § 1026.37(a)(9).

Several national trade associations representing mortgage lenders and two large banks commented that the loan purposes required by proposed § 1026.37(a)(9) differ from those required to be disclosed under Regulation C, 12 CFR 1003, *et seq*., which implements the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq*. Those commenters suggested that defining loan purpose differently for Regulation C and for the integrated TILA-RESPA disclosures would create unnecessary regulatory complexity and increase the compliance burden for industry. One regional bank commenter, however, stated that the loan purpose categories proposed in § 1026.37(a)(9) were sufficient. A document preparation company requested that the Bureau add temporary financing or "bridge" loans as a loan purpose.

Regarding the definition of loan purpose, the Bureau recognizes that using the same definition in two of its regulations may ease some compliance burden for industry. However, Regulation C and the integrated disclosures implement different statutes and have entirely different purposes. The purpose of the integrated disclosures set forth by the Dodd-Frank Act is to aid consumers' understanding of their loan transactions. Regulation C, by contrast, is intended to provide the public with loan data, which data is typically used by regulatory agencies to study the mortgage market and for compliance purposes. 12 CFR 1003.1. Given the different purposes of the integrated disclosures and Regulation C, the Bureau declines to revise § 1026.37(a)(9) to conform with Regulation C.

With respect to adding other loan purposes, in choosing the purposes proposed in

§ 1026.37(a)(9), the Bureau intended to describe only the most common and basic loan purposes, recognizing that it would be impossible to list every conceivable specific purpose that a consumer has in obtaining a loan. The Bureau is satisfied that the purposes proposed will adequately describe the transactions covered by the final rule and declines to add temporary financing or "bridge" loans to § 1026.37(a)(9). Accordingly, pursuant to the authority discussed above and in the proposal and for the reasons described, the Bureau is adopting § 1026.37(a)(9) as proposed.

37(a)(9)(i) Purchase

Proposed § 1026.37(a)(9)(i) would have required the creditor to disclose that the loan is a "Purchase," if the credit is obtained to finance the acquisition of the property that is the subject of the loan transaction. Proposed comment 37(a)(9)-1.i would have clarified the meaning of the term "purchase."

A GSE requested that the Bureau clarify that in order for a loan to be considered a purchase loan, none of the borrowers can currently hold an ownership interest in the property. The commenter noted that such a clarification would align the meaning of purchase for the disclosure required by § 1026.37(a)(9) with current industry standards. The Bureau believes that the general understanding of a "purchase" loan is one where the consumer does not already hold an interest in the property. Further, the Bureau believes that the proposed regulatory text is sufficient to convey such meaning, because it states that the disclosure applies to the "acquisition" of the property, and one cannot acquire what one already owns. Accordingly, the Bureau is adopting § 1026.37(a)(9)(i) as proposed and comment 38(a)(9)-1.i substantially as proposed with minor modifications for clarity.

37(a)(9)(ii) Refinance

Proposed § 1026.37(a)(9)(ii) would have required the creditor to disclose that the loan is for a "Refinance" if, consistent with § 1026.20(a) other than with regard to the identity of the creditor, the credit is to refinance an existing obligation already secured by the property that is the subject of the transaction. As under § 1026.20(a), whether a transaction is a refinancing under proposed § 1026.37(a)(9)(ii) would have depended on whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The proposal stated that this may include an obligation under which amounts other than principal remain due under the existing obligation and are to be paid with the new obligation to satisfy the existing obligation. Proposed comment 37(a)(9)-1.ii would have clarified the meaning of the term "refinance" and explained that the consumer may or may not receive cash from the transaction. Proposed comment 37(a)(9)-1.ii also would have provided a description of a refinancing with and without cash provided and provided an example of how a consumer may use cash received in a refinancing transaction with cash provided. Proposed comment 37(a)(9)-2 would have clarified that proposed § 1026.37(a)(9)(ii), unlike § 1026.20(a), applies to all such transactions even if the refinancing is undertaken by a new creditor.

Two GSEs commented that the proposed definition of refinance does not align with common industry usage in that it fails to include credit secured by a dwelling not previously subject to a security interest. The proposed definition of refinance in § 1026.37(a)(9)(ii) is not a new definition, however; it is the existing definition under § 1026.29(a) that is used throughout Regulation Z. Though the Bureau understands the GSEs' desire to define a refinance transaction in a way that aligns with current industry usage, the purposes of the integrated disclosures are to aid consumer understanding of the transaction and facilitate compliance with the disclosure requirements, and the Bureau believes that using the existing Regulation Z definition of refinance sufficiently informs consumers while facilitating compliance for creditors. Using the existing definition in Regulation Z avoids adding regulatory complexity through the creation of a new definition of that term. Accordingly, the Bureau declines to revise the proposed definition.

However, as described below, the Bureau understands that additional clarity is necessary for situations in which more than one loan purpose could be used to describe a particular transaction. Accordingly, the Bureau is revising § 1026(a)(9)(ii) to provide that the "Refinance" disclosure is applicable only if the credit is not for the purpose described in § 1026.37(a)(9)(i). The Bureau is further revising § 1026.37(a)(9)(ii) and comment 37(a)(9)-2 to state that a transaction is for a refinance without regard to whether the creditor is the original creditor or a holder or servicer. For the reasons discussed above, the Bureau is adopting § 1026.37(a)(9)(ii) and comment 37(a)(9)-2 as revised, and comment 37(a)(9)-1.ii as proposed.

37(a)(9)(iii) Construction

If the extension of credit is to finance the construction of a dwelling on the property, proposed § 1026.37(a)(9)(iii) would have required the creditor to disclose that the loan is for "Construction." Proposed comment 37(a)(9)-1.iii would have clarified that the creditor is required to disclose that the loan is for "Construction" both in transactions where the extension of credit is to cover the costs of a construction project only (construction-only loan), whether it is a new construction or a renovation project, and in transactions where a multiple advance loan may be permanently financed by the same creditor (construction-to-permanent loan). The proposed comment also would have clarified that, in construction-only transactions, the consumer may be required to make interest only payments during the construction phase of the project with the loan balance due at the completion of the construction project. Finally, proposed comment 37(a)(9)-1.iii would have cross-referenced § 1026.17(c)(6)(ii) and comments

17(c)(6)-2 and -3 for further guidance regarding construction-to-permanent transactions.

A GSE and two document preparation companies commented that disclosing a transaction for the purpose of a renovation, no matter how small, as a construction loan, does not align with common industry usage and would be confusing to consumers. The Bureau understands that disclosing the extension of credit for a renovation project as a construction loan could be confusing to the consumer because it is not aligned with common usage of the term, as well as industry usage. Accordingly, the Bureau is revising comment 37(a)(9)-1.iii to refer to initial construction and to clarify that this disclosure does not apply to renovations. The Bureau is further revising § 1026.37(a)(9)(iii) to state that a loan is for "Construction" only if it will be used to finance the initial construction of a dwelling and is not for one of the purposes described in § 1026.37(a)(9)(i) or (ii), for the reasons discussed in the section-by-section analysis of § 1026.37(a)(9)(ii). Accordingly, credit obtained for the purpose of renovation shall be disclosed as a refinance or home equity loan, as applicable.

37(a)(9)(iv) Home Equity Loan

If the extension of credit does not involve the purchase of real property as described in § 1026.37(a)(9)(i) or the construction of a dwelling as described in § 1026.37(a)(9)(iii) and will not be used to refinance an existing obligation as described in § 1026.37(a)(9)(ii), proposed § 1026.37(a)(9)(iv) would have required the creditor to state that the extension of credit is for a "Home Equity Loan." Proposed comment 37(a)(9)(iv)-1.iv would have clarified that the home equity loan disclosure applies whether the transaction will be secured by a first or subordinate lien on the property. The Bureau did not receive any comments on § 1026.37(a)(9)(iv). The Bureau is adopting § 1026.37(a)(9)(iv) and comment 37(a)(9)-1.iv substantially as proposed but with minor modifications for clarity.

37(a)(10) Product

Pursuant to TILA section 128(b)(2)(C)(ii), under existing § 1026.18(s), the creditor is required to provide certain information about the interest rate and payments, which is based on the loan product. In proposed § 1026.37(a)(10), the Bureau would have required a description of the loan product. The Bureau proposed this new requirement pursuant to its authority under TILA section 105(a), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and section 1405(b) of the Dodd-Frank Act with respect to residential mortgage loans. The Bureau stated in the proposal that it believed that requiring the disclosure of the loan product on the Loan Estimate promotes the informed use of credit and more effective advance disclosure of settlement charges by providing consumers with key loan terms early in the transaction and in a clear and conspicuous manner. The Bureau further stated in the proposal that this disclosure would enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. In addition, the Bureau stated its belief that disclosure of the loan product may improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

Specifically, proposed § 1026.37(a)(10)(i) would have required the creditor to identify the type of loan product for which the consumer has applied and proposed § 1026.37(a)(10)(ii) would have required a description of certain loan features added to the loan product that may change the consumer's periodic payment. Proposed § 1026.37(a)(10)(iii) would have provided instructions on how to disclose loan products that contain one or more loan features, would have stated that the creditor may disclose only one loan feature, and cross-referenced proposed § 1026.37(a)(10)(ii) as establishing the following hierarchy to be adhered to when disclosing a loan product with more than one loan feature: (1) negative amortization; (2) interest only; (3) step payment; (4) balloon payment; and (5) seasonal payment. Proposed § 1026.37(a)(10)(iv) would have required that the disclosure of any loan product or loan feature be preceded by any introductory rate periods, adjustable features, and applicable time periods. This aspect of the proposal would not have applied to fixed rate loans with no additional features. Finally, comments to proposed § 1026.37(a)(10) would have provided further descriptions and examples of the loan products and features to be disclosed.

A national trade association representing mortgage lenders commented that requiring the disclosure of loan features was confusing as part of the loan product name and recommended instead that the loan features be disclosed in the "loan terms" section of the Loan Estimate. A large bank commented that disclosing only one loan feature was misleading to the consumer and prevented useful shopping for loan products; instead the commenter suggested disclosing all applicable features.

As discussed above, the Bureau has extensively tested the integrated disclosures and concluded that consumers are able to use them to compare and make sophisticated trade-offs between various loan products. *See* Kleimann Testing Report at 278. The Bureau believes that the general design of the loan product disclosure is beneficial for consumers and has determined not to change the structure of proposed § 1026.37(a)(10). Accordingly, the Bureau is finalizing § 1026.37(a)(10) substantially as proposed, with minor modifications for clarity, based on the authority described in the proposal and above.

37(a)(10)(i)

Proposed § 1026.37(a)(10)(i) would have required disclosure of one of three product types: adjustable rate, step rate, or fixed rate, as defined in that paragraph as the product for which the consumer has applied. Proposed comment 37(a)(10)-1 would have clarified the proper format for disclosure of the product types listed. The Bureau did not receive any comments regarding proposed § 1026.37(a)(10)(i) and is adopting it as proposed. The Bureau is adopting comment 37(a)(10)-1 as revised to clarify that only the first adjustment period shall be disclosed for any loan without the features described in § 1026.37(a)(10)(ii), for the reasons discussed in the section-by-section analysis of § 1026.37(a)(10)(iv), below.

37(a)(10)(i)(A) Adjustable Rate

If the interest rate may increase after consummation, but the rates that will apply or the periods for which they will apply are not known at consummation, proposed § 1026.37(a)(10)(i)(A) would have required that the loan be disclosed as an "Adjustable Rate." Proposed comment 37(a)(10)-1.i would have clarified that the proper format for disclosure of an adjustable rate product is the length of any introductory period, followed by the frequency of the adjustment periods thereafter preceding the loan product. For example, where the loan product is an adjustable rate with an introductory rate that remains the same for the first five years of the loan term and then adjusts every three years starting in year six, proposed comment 37(a)(10)-1.i would have explained that the disclosure required by § 1026.37(10) is "5/3 Adjustable Rate."

Several industry commenters requested guidance regarding how to disclose adjustable loan rate products that have multiple adjustment intervals. One national trade association representing mortgage lenders requested guidance for how to disclose an adjustable rate loan where the introductory period may be within a certain range of months but is not yet known.

The Bureau recognizes that the proposal did not address how to disclose such products. Accordingly, the Bureau is adopting § 1026.37(a)(10)(i)(A) as proposed, but is expanding comment 37(a)(10)-1.i to address comments requesting guidance on how to disclose adjustable rate loan products which have multiple adjustment intervals. Comment 37(a)(10)-1.i is revised to clarify that disclosure of only the first adjustment period is required for the reasons discussed in the section-by-section analysis of § 1026.37(a)(10)(iv), below. To further address the numerous potential adjustable rate products, the Bureau is adding comment 37(a)(10)-1.i.A to explain that where an adjustable rate loan product has no introductory period, the creditor is required to disclose a "0" followed by the first adjustment period. The Bureau also is adding comment 37(a)(10)-1.i.B to clarify, in response to the comment received regarding unknown introductory periods, that where the introductory period is not yet known, § 1026.37(a)(10) requires disclosure of the shortest potential introductory period.

37(a)(10)(i)(B) Step Rate

Under proposed § 1026.37(a)(10)(i)(B), the loan product would have been required to be disclosed as a "Step Rate" if the interest rate will change after consummation and the applicable rates and the periods for the applicable rates are known. Proposed comment 37(a)(10)-1.ii would have clarified the proper format for disclosure of a step-rate product.

A regional bank and a document preparation company both requested guidance on how to disclose preferred rate transactions under proposed § 1026.37(a)(10). One document preparation company commenter requested clarification of whether a transaction subject to a third-party buydown would be disclosed as a step rate transaction pursuant to proposed § 1026.37(a)(10)(i)(B). The Bureau also received comments from varied sources questioning the logic of requiring the disclosure of multiple adjustment intervals for the step rate product example in proposed comment 37(a)(10)-1.ii.

With respect to the request for guidance regarding preferred rate transactions, the Bureau notes that existing comment 17(c)(1)-11.iii provides guidance regarding preferred rate loans, which applies to the disclosures required by § 1026.37(a)(10). In a preferred rate transaction, the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, and the note reflects the preferred rate. As the terms of the legal obligation reflect the preferred rate, the disclosures are to be based on the preferred rate. The Bureau additionally notes that if the preferred rate under the terms of the legal obligation were set to expire at a defined future date, the disclosures required by § 1026.37 should reflect such expiration of the preferred rate as a scheduled interest rate adjustment. With respect to third-party buydowns, existing comment 1026.17(c)(1)-3 addresses how to treat such transactions, which guidance would apply to the disclosure required by § 1026.37(a)(10)(i)(B).

The Bureau is adopting § 1026.37(a)(10)(i)(B) as proposed but is revising comment 37(a)(10)-1.ii to clarify that disclosure of only the first adjustment interval is required, for the reasons discussed in the section-by-section analysis of § 1026.37(a)(10)(iv). In response to the comments received regarding the proposed step rate example, the Bureau is also revising comment 37(a)(10)-1.ii to clarify how to disclose a step rate product without an introductory rate.

37(a)(10)(i)(C) Fixed Rate

Proposed § 1026.37(a)(10)(i)(C) would have required the creditor to disclose the loan product as a "Fixed Rate" if the product is neither an Adjustable Rate nor a Step Rate, as described in § 1026.37(a)(10)(i)(A) and (B), respectively. Proposed comment 37(a)(10)-1.iii would have provided guidance regarding the disclosure required by § 1026.37(a)(10)(i)(C). The Bureau did not receive any comments on proposed § 1026.37(a)(10)(i)(C) describing fixed rate loan products or its accompanying comment, proposed comment 37(a)(10)-1.iii. Accordingly, the Bureau is adopting proposed § 1026.37(a)(10)(i)(C) and its accompanying comment as proposed.

37(a)(10)(ii)

Proposed § 1026.37(a)(10)(ii) would have required the disclosure of loan features that may change the consumer's periodic payment. As noted above, although structured differently, § 1026.18(s) requires a similar disclosure. Proposed § 1026.37(a)(10)(ii) would have required the consumer to disclose one of the following features, as applicable: negative amortization, interest only, step payment, balloon payment, or seasonal payment. Where a transaction has more than one of the loan features described in that paragraph, proposed § 1026.37(a)(10) would have required disclosure only of the first applicable feature in the order the features are listed in § 1026.37(a)(10)(ii).

Proposed comment 37(a)(10)-2 would have clarified the requirements of proposed § 1026.37(a)(10)(iii) and (iv) with respect to the feature that is disclosed and the time period or the length of the introductory period and the frequency of the adjustment periods, as applicable, that preceded the feature. The proposed comment would have provided as examples: an adjustable rate product with an introductory rate that is interest only for the first five years and then adjusts every three years starting in year six would be disclosed as "5 Year Interest Only, 5/3 Adjustable Rate"; a step-rate product with an introductory interest rate that lasts for seven years, and adjusts every year thereafter for the next five years at a predetermined rate would be disclosed as "7/1 Step Rate"; and a fixed rate product that is interest only for ten years with a balloon payment due at the end of the ten-year period would be disclosed as "10 Year Interest Only, Fixed Rate." The proposal noted that the balloon payment feature, however, also would be disclosed elsewhere on the form.

One trade association representing banks requested guidance on how to disclose a loan that had multiple features. As stated in the proposal, where a transaction has more than one of the features listed, § 1026.37(a)(10)(iii) requires disclosure of only one feature, the first applicable feature in the order they are listed in the regulation. The Bureau is adopting § 1026.37(a)(10)(ii) substantially as proposed but with a minor modification for clarity. The Bureau is revising comment 37(a)(10)-2 to clarify that where a transaction feature has multiple adjustment periods, only the first adjustment period must be disclosed for the reasons discussed in the section-by-section analysis of § 1026.37(a)(10)(iv), below.

37(a)(10)(ii)(A) Negative Amortization

Proposed § 1026.37(a)(10)(ii)(A) would have required that the creditor disclose a "Negative Amortization" loan feature if, under the terms of the legal obligation, the loan balance may increase. Proposed comment 37(a)(10)-2.i would have provided an example of the disclosure of a loan product with a negative amortization feature. The Bureau did not receive any comments on proposed § 1026.37(a)(10)(ii)(A) or its accompanying commentary and is adopting § 1026.37(a)(10)(ii)(A) as proposed. The Bureau is adopting comment 37(a)(10)-2.i substantially as proposed but with a minor modification for clarity.

37(a)(10)(ii)(B) Interest Only

Proposed § 1026.37(a)(10)(ii)(B) would have required that the creditor disclose an "Interest Only" loan feature if, under the legal obligation, one or more regular periodic payments may be applied only to interest accrued and not to the loan principal. Proposed comment 37(a)(10)-2.ii would have provided an example of the disclosure of a loan product with an interest only feature. The Bureau did not receive any comments on proposed § 1026.37(a)(10)(ii)(B) or its accompanying commentary and is adopting § 1026.37(a)(10)(ii)(B) as proposed. The Bureau is adopting comment 37(a)(10)-2.ii substantially as proposed but with a minor modification for clarity.

37(a)(10)(ii)(C) Step Payment

Proposed § 1026.37(a)(10)(ii)(C) would have required that the creditor disclose a "Step Payment" loan feature if the terms of the legal obligation include a feature that involves scheduled variations in the periodic payment during the term of the loan that are not caused by changes in the interest rate. Proposed comment 37(a)(10)-2.iii would have clarified that the term "step payment" is sometimes also called a "graduated payment" and provided an example and guidance on the format to be used when disclosing a loan product with a Step Payment feature. The Bureau did not receive any comments on proposed § 1026.37(a)(10)(ii)(C) and is adopting it as proposed. The Bureau is adopting comment 37(a)(10)-2.iii substantially as proposed but with a minor modification for clarity.

37(a)(10)(ii)(D) Balloon Payment

Proposed § 1026.37(a)(10)(ii)(D) would have required that the creditor disclose a "Balloon Payment" loan feature if the transaction includes a balloon payment as defined in proposed § 1026.37(b)(5). Proposed comment 37(a)(10)-2.iv would have clarified that the term "balloon payment" has the same meaning as in proposed § 1026.37(b)(5) and provided further guidance on the format to be used when disclosing a loan product with a balloon payment feature. The Bureau did not receive any comments on proposed § 1026.37(a)(10)(ii)(D) and is adopting it substantially as proposed with a revision to state that the feature should be disclosed if the terms of the obligation include it, to conform to the language used in § 1026.37(a)(10(ii)(E). The Bureau is adopting comment 37(a)(10)-2.iv as revised to clarify that if a transaction includes more than one balloon payment, only the earliest year that a balloon payment is due must be disclosed.

37(a)(10)(ii)(E) Seasonal Payment

Proposed § 1026.37(a)(10)(ii)(E) would have required that the creditor disclose whether the terms of the legal obligation expressly provide that regular periodic payments are not scheduled for specified unit-periods on a regular basis, disclosed as a "Seasonal Payment" feature. The Bureau stated in the proposal that it understands from industry feedback provided in connection with the Bureau's stakeholder outreach that some loans, which may be more prevalent in the community bank market, may be structured so that periodic principal and interest payments are not scheduled to be made by the consumer in between specified unit-periods on a regular basis. The proposal provided as an example that such a loan may be structured so that payments are not required to be made by the consumer during the months of June through August each year of the loan term. The proposal noted that these loans are sometimes called "teacher loans." Proposed § 1026.37(a)(10)(ii)(E) would have provided for the disclosure of such a product feature. Proposed comment 37(a)(10)-2.v would have provided guidance regarding this requirement. The Bureau did not receive any comments on proposed § 1026.37(a)(10)(ii)(E) and is adopting it and comment 37(a)(10)-2.v as proposed.

37(a)(10)(iii)

Proposed § 1026.37(a)(10)(iii) would have required that if more than one loan feature is applicable to the transaction, the creditor disclose only the first applicable loan feature from the order in which they are presented in proposed § 1026.37(a)(10)(ii). The proposal stated that this proposed order of loan features prioritizes the loan features to ensure that consumers receive information about potential costs and risks in a readily visible format, understanding that consumers will receive information about some applicable features elsewhere in the Loan Estimate. The proposal provided as an example that the existence of a balloon payment also would have been disclosed under both proposed § 1026.37(b) and (c), and thus, is later in the order of loan features under proposed § 1026.37(a)(10)(iii). In addition, the Bureau stated its belief in the proposal that seasonal payments do not pose as great a risk to consumers as do negatively amortizing or non-amortizing payments, and thus, disclosure of these features is earlier than seasonal payments in the order under proposed § 1026.37(a)(10)(iii).

Several document preparation companies and a large bank commented that the proposal was not clear with regard to how to disclose construction-to-permanent loans, which often have an adjustable rate phase followed by a fixed rate phase. As discussed above in the section-by-section analysis of § 1026.37(a)(8), existing § 1026.17(c)(6)(ii) and its accompanying commentary address how to disclose construction-to-permanent transactions. Section 1026.17(c)(6)(ii) provides that "[w]hen a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction." Accordingly, a creditor may disclose a construction-to-permanent loan as separate transactions with distinct loan product types. Should a creditor choose to treat the construction-to-permanent transaction as one, however, the Bureau notes that the disclosure of a Fixed Rate product type is only permitted under § 1026.37(a)(10) if the product does not otherwise fall within the definition of Adjustable Rate or Step Rate product under § 1026.37(a)(10)(i)(A) or (B). Accordingly, where a construction-to-permanent transaction has an adjustable rate construction phase followed by a fixed rate permanent phase, § 1026.37(a)(10) would require it to be disclosed as an adjustable rate product because the adjustable rate phase would fall within the Adjustable Rate product determination. The Bureau is adopting § 1026.37(a)(10)(iii) as proposed.

37(a)(10)(iv)

Finally, proposed § 1026.37(a)(10)(iv) would have required the creditor to include in the disclosures required by § 1026.37(a)(10)(i) and (ii) information regarding any introductory rate period, adjustment period, or time period, as applicable, and that this information should precede both the loan product and any features disclosed, as applicable.

The Bureau received comments from a document preparation company and a national trade association representing mortgage lenders requesting clarification regarding the disclosure of transactions where there are multiple adjustment periods. Specifically, the commenters asked for explanation of proposed comment 37(a)(10)-1.ii, which would have addressed step rate loan products. That proposed comment stated that, for example, if a step rate loan had an introductory interest rate that lasts for 10 years and adjusts every year thereafter for the next five years, and then adjusts every three years for the next 15 years, the disclosure required by § 1026.37(a)(10) is "10/1/3 Step Rate." Further, a document preparation company and a national trade association representing mortgage lenders commented that proposed § 1026.37(a)(10) was silent on how to disclose product types and features that change after a period of months or days that do not correspond to whole years.

The Bureau has considered these comments and has determined that, given the possibility of multiple adjustment periods over the course of a single transaction, § 1026.37(a)(10)(iv) should be revised to limit the number of periods to be disclosed. The Bureau has determined that disclosing every adjustment period as part of the loan product could be confusing to consumers and difficult to implement. As mentioned in the proposal and above in part III, the Bureau is concerned about the risk to consumers of information overload. The Bureau believes that the first period of adjustment of a loan feature would aid consumer understanding of that feature without potentially causing information overload. Accordingly, the Bureau is revising

§ 1026.37(a)(10)(iv) to require that the loan product be preceded by a description of any introductory rate period, and only the first adjustment period, as applicable, and to provide additional clarity.

With respect to the comment regarding product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, the Bureau believes, after considering this comment, that it would facilitate compliance with the disclosure requirements to address this possibility in the commentary. Accordingly, the Bureau is adding comment 37(a)(10)-3 to clarify how to disclose product types and features that have periods that do not equate to a number of whole years. Comment 37(a)(10)-3 also clarifies how to disclose product types and features that have adjustment periods that change more frequently than monthly.

37(a)(11) Loan Type

Existing appendix A to Regulation X requires disclosure of the loan type in section B of the RESPA settlement statement. The Bureau proposed to use its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act 1032(a) to require a similar disclosure. The types of transactions disclosed under proposed § 1026.37(a)(11) would have permitted disclosure of different cost structures or underwriting requirements. The Bureau stated its belief in the proposal that the disclosure of the type of transaction enables consumers to evaluate whether it is the type of transaction that is best suited for their personal situation. The Bureau stated that it believed that including information regarding the type of transaction for which the consumer has applied will promote the informed use of credit and more effective advance disclosure of closing costs, and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions by providing consumers with information regarding important characteristics of the loan early in the transaction. Accordingly, under proposed § 1026.37(a)(11), creditors would have been required to disclose one of the following loan types: Conventional, FHA, VA, or Other. The Bureau did not receive any comments on proposed § 1026.37(a)(11) and is adopting it as proposed, based on the legal authority described above and in the proposal.

37(a)(11)(i) Conventional

If the loan is not guaranteed or insured by a Federal or State government agency, proposed § 1026.37(a)(11)(i) would have required the creditor to disclose that the loan is a "Conventional." The Bureau did not receive any comments on proposed § 1026.37(a)(11)(i) and is adopting it as proposed.

37(a)(11)(ii) FHA

If the loan is insured by the Federal Housing Administration, proposed § 1026.37(a)(11)(ii) would have required the creditor to disclose that the loan is an "FHA." The Bureau did not receive any comments on proposed § 1026.37(a)(11)(ii) and is adopting it as proposed.

37(a)(11)(iii) VA

If the loan is guaranteed by the U.S. Department of Veterans Affairs, proposed § 1026.37(a)(11)(iii) would have required the creditor to disclose that the loan is a "VA." The Bureau did not receive any comments on proposed § 1026.37(a)(11)(iii) and is adopting it as proposed.

37(a)(11)(iv) Other

For federally-insured or guaranteed loans that do not fall within the categories described in proposed § 1026.37(a)(11)(i) through (iii) and loans insured or guaranteed by a State agency or other entity, proposed § 1026.37(a)(11)(iv) would have required the creditor to disclose the loan type as “Other” and provide a brief description of the loan. Proposed comment 37(a)(11)-1 would have provided details on the type of loans that would be categorized as “Other” and an example of an acceptable description of a loan that falls within that category.

A document preparation company commenter requested that § 1026.37(a)(11) add USDA loans as an additional loan type. A large bank and a national title company asked for guidance on how to describe “other loans” and whether additional pages could be attached to the Loan Estimate to do so where the space provided was not adequate. Another document preparation company asked for a list of all possible loan types.

Regarding USDA loans, the Bureau notes that it specifically explained in proposed comment 37(a)(11)-1, that a loan guaranteed or funded by the Rural Housing Service of the USDA would have to be disclosed as “Other.” Given the space constraints of the Loan Estimate and the Closing Disclosure and the risk of information overload to the consumer, the Bureau believes it appropriate to create check boxes for the most common loan types and a general space for other types labeled as “Other.” With respect to the description of “Other” loans, the Bureau does not believe that adding a page for a description of loan type that does not fit into the space provided on form H-24 would benefit consumers, given the risk of information overload. The Bureau believes that creditors should be able to concisely describe the loan type in the space provided and that appending additional pages to the Loan Estimate for this disclosure could cause consumer confusion. Accordingly, the Bureau declines to revise § 1026.37(a)(11)(iv) or comment 37(a)(11)-1 to permit the use of an additional page for the disclosure of “other” loan types. With respect to the request for a list of permissible loan types, as stated in the proposal, the permissible loan types under § 1026.37(a)(11) are conventional, FHA, VA, and other.

Because the Bureau continues to believe that a disclosure of loan type will, for the reasons discussed, effectuate the purposes of both TILA and RESPA, it is adopting § 1026.37(a)(11)(iv) as proposed. Comment 37(a)(11)-1 is adopted substantially as proposed with minor modifications for clarity.

37(a)(12) Loan Identification Number (Loan ID #)

Appendix A to Regulation X requires the settlement agent to provide the "loan number" in the RESPA settlement statement. The Bureau proposed to use its authority in TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to require disclosure of the loan number on the Loan Estimate. The Bureau stated its belief in the proposal that including this information in a prominent position on the Loan Estimate will promote the informed use of credit and more effective advance disclosure of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions by providing consumers with access to information they may use repeatedly throughout the transaction.

Accordingly, proposed § 1026.37(a)(12) would have required the creditor to provide a unique number that may be used by the lender, consumer, and other parties to identify the loan transaction, labeled as "Loan ID #." Proposed comment 37(a)(12)-1 would have clarified that the lender has the discretion to create the unique loan identification number and that different and unrelated loan transactions with the same creditor may not share the same loan identification number.

The Bureau did not receive any comments on proposed § 1026.37(a)(12) or comment 37(a)(12)-1. Because the Bureau continues to believe that disclosure of a loan identification number will, for the reasons discussed, effectuate the purposes of TILA and RESPA, it is adopting § 1026.37(a)(12) substantially as proposed, based on the authority described above and in the proposal, with modifications for clarity. In order to ensure that a particular transaction retains the same loan identification number throughout the loan application process, the Bureau is revising proposed comment 37(a)(12)-1 to clarify that where a creditor issues a revised Loan Estimate for a transaction, the loan identification number must remain the same as on the initial Loan Estimate. The Bureau further notes and is revising comment 37(a)(12)-1 to clarify that the identification number disclosed under § 1026.37(a)(12) must be a unique "number" to enable parties to identify the particular transaction using such number, and that the "number" may be composed of any alpha-numeric characters and need not be limited to numbers. The Bureau adopts comment 37(a)(12)-1 as revised pursuant to its authority in TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a).

37(a)(13) Rate Lock

Existing appendix C to Regulation X requires the loan originator to disclose information regarding the expiration date for the interest rate, charges, and related terms offered by the originator in the RESPA GFE. As stated in the proposal, the Bureau believed that this information is critical to the consumer's ability to understand the transaction and avoid the uninformed use of credit. Furthermore, the Bureau stated its belief in the proposal that disclosure of this information would promote more effective advance disclosure of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. Thus, the Bureau proposed to use its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to require creditors to provide the rate lock information currently provided in the RESPA GFE.

Consistent with this requirement, proposed § 1026.37(a)(13) would have required the creditor to disclose whether the interest rate identified under proposed § 1026.37(b)(2) has been locked by the consumer and, if set, proposed § 1026.37(a)(13)(i) would have required disclosure of the date and time (including the applicable time zone) the locked rate would expire. Proposed § 1026.37(a)(13)(ii) would have stated that the "rate lock" statement required by proposed § 1026.37(a)(13) is to be accompanied by a statement notifying the consumer that the interest rate, points, and lender credits provided in the Loan Estimate are subject to change unless the rate has been set by the consumer and the date and time (including the applicable time zone) all estimated closing costs provided in the Loan Estimate will expire. Proposed comment 37(a)(13)-1 would have clarified that for purposes of proposed § 1026.37(a)(13), a disclosed interest rate is set for a specific period of time even if subject to conditions set forth in the rate-lock agreement between the creditor and consumer. Proposed comment 37(a)(13)-2 would have clarified that the information provided under proposed § 1026.37(a)(13)(ii) related to estimated closing costs is required whether or not the transaction is consummated or the terms are otherwise not accepted or extended. Proposed comment 37(a)(13)-3 would have stated that all times provided in the disclosure must reference the applicable time zone and provided an example of an appropriate disclosure of the applicable time zone.

A State trade association representing banks requested clarification regarding how to disclose an interest rate in the situation where a creditor has a policy to honor the rate quoted on the Loan Estimate but does not require the consumer to sign a rate lock agreement. Several national trade associations representing mortgage lenders commented that proposed comment 37(a)(13)-2 referred to an "expiration date" but did not identify whether that expiration date related to the interest rate or the closing costs. Several varied types of commenters questioned the specific wording of the rate lock disclosure on form H-24 and suggested alternative language that the commenters believed to be more clear.

Regarding the situation where the creditor has a policy to honor the rate quoted without a rate lock agreement, both proposed §1026.37(a)(13) and comment 37(a)(13)-1 expressly contemplate a rate that is locked for a specific period of time pursuant to a rate lock agreement. Accordingly, where a creditor has a policy to honor the quoted rate, but does not lock the rate pursuant to a written agreement with the consumer, the creditor would disclose "no" pursuant to § 1026.37(a)(13)(i). The Bureau believes this disclosure is appropriate to aid the consumer's understanding of the transaction, because the creditor would not be bound by an agreement to provide the interest rate to the consumer at consummation.

With respect to the suggested confusion over proposed comment 37(a)(13)-2's reference to an expiration date, the Bureau notes that § 1026.37(a)(13) states that the disclosure must state the date and time at which the "estimated closing costs" expire. The Bureau also notes that § 1026.19(e)(3)(iv)(E) provides the closing costs disclosed on the Loan Estimate are not subject to the limitations on increases under § 1026.19(e)(3), if the consumer does not express an intent to proceed within 10 business days after the disclosures are provided. The Bureau believes the statement as proposed provides consumers with enough information regarding the possibility that the estimated closing costs may not be available. Accordingly, the Bureau believes that the comment does not require revision to clarify that it refers to the expiration of the closing costs under § 1026.19(e)(3)(iv)(E).

Regarding the rate lock disclosure on proposed form H-24, the proposed language would have stated: "Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on ___" As discussed above, the Bureau has tested the integrated disclosures extensively and that testing confirmed that consumers were able to understand and adequately use the information on page 1 of the Loan Estimate, including the disclosure required by § 1026.37(a)(13) as proposed. *See* Kleimann Testing Report at 195. Accordingly, because the Bureau continues to believe that disclosure of the rate lock period is critical to the consumer's ability to understand the transaction and avoid the uninformed use of credit, it is adopting § 1026.37(a)(13) and comments 37(a)(13)-1and -2 substantially as proposed but with minor modifications to refer to an interest rate as locked instead of set, for consistency with form H-24 of appendix H to Regulation Z. The Bureau is further modifying comments 37(a)(13)-1 and -2 for clarity and is adopting comment 37(a)(13)-3 as proposed.

37(b) Loan Terms

To shop for and understand the cost of credit, consumers must be able to identify and understand the key loan terms offered to them. As discussed below, the Bureau's research before the proposal informed the Bureau that the following are key loan terms that consumers recognize and expect to see on closed-end mortgage disclosures, together with their settlement charges: loan amount; interest rate; periodic principal and interest payment; whether the loan amount, interest rate, or periodic payment can increase; and whether the loan has a prepayment penalty or balloon payment. *See* Macro 2009 Closed-End Report at 6.

As discussed in the proposal, TILA requires the disclosure of some of these key loan terms, but not all. Notably, the loan amount and interest rate are currently not specifically required to be disclosed by TILA section 128. 15 U.S.C. 1638. Although Regulation Z currently requires the interest rate to be disclosed in the payment schedule required by § 1026.18(s), it does not require the loan amount to be disclosed for non-HOEPA loans, and does not require a summary table identifying these key loan terms for closed-end credit secured by real property.

12 CFR 1026.18. For federally related mortgage loans, § 1024.7(d) of Regulation X currently requires the RESPA GFE to contain a table on page 1, labeled “Summary of your loan terms,” which contains the following information: (i) initial loan amount; (ii) loan term; (iii) initial interest rate; (iv) initial monthly amount owed for principal, interest, and mortgage insurance; (v) whether the interest rate can rise, and if so, the maximum interest rate and the date of the first interest rate change; (vi) whether the loan balance can rise, and if so, the maximum loan balance; (vii) whether the monthly amount owed for principal, interest, and mortgage insurance can rise, and if so, the payment amount at the first change and the maximum payment; (viii) whether the loan has a prepayment penalty and the maximum prepayment penalty; and (xi) whether the loan has a balloon payment, the amount, and when it is due. 12 CFR 1024.7(d).

Pursuant to its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), the Bureau proposed to require creditors to provide the key loan terms described above in a summary table as part of the integrated Loan Estimate required by proposed § 1026.19(e) for closed-end transactions secured by real property (other than reverse mortgages). As described in the proposal, at the Bureau’s pre-proposal consumer testing, participants were able to use the summary table to identify and compare easily the key loan terms for different loans. The Bureau stated in the proposal its belief, based on its consumer testing, that a concise loan summary table will improve consumer understanding of the loan terms presented, such as an understanding of whether the consumer can afford the loan, will enable comparisons of different credit terms offered by the same or multiple creditors, and will enable consumers to verify information about the loan provided by the creditor orally or in some other form, such as a worksheet. The Bureau stated in the proposal that it believed this disclosure will effectuate the purposes of TILA by promoting the informed use of credit and assuring a meaningful disclosure to consumers, including more effective advance disclosure of settlement costs. Furthermore, the Bureau stated that, consistent with section 1032(a) of the Dodd-Frank Act, this disclosure would ensure that the features of consumer credit transactions secured by real property 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.

The Bureau proposed § 1026.37(b), which would have required a separate table that includes the information and follows the requirements specified in § 1026.37(b)(1) through (8). As proposed, the table would have appeared under the heading “Loan Terms” to enhance visibility. The individual items of information in the table also would have been labeled to enhance visibility. The format would have provided consumers with a bold “yes” or “no” answer to the questions of whether the loan amount, interest rate, or periodic payment can increase, and whether the loan has a prepayment penalty or balloon payment. The Bureau stated in the proposal that it believed that the format of the Loan Terms table will help consumers quickly and easily identify their key loan terms.

The Bureau proposed comment 37(b)-1 to provide additional guidance to creditors regarding the Loan Terms table. Comment 37(b)-1 would have clarified that the Loan Terms table should reflect the terms of the legal obligation that the consumer will enter into, based on information the creditor knows or reasonably should know. The Bureau did not receive any comments on proposed § 1026.37(b) or comment 37(b)-1. Because the Bureau continues to believe disclosing the key loan terms that the Bureau’s research and consumer testing demonstrate are important to and used by consumers to evaluate and understand loan terms, it is adopting § 1026.37(b) substantially as proposed but with minor modifications for clarity, based on the legal authority described in the proposal and above.

Under §§ 1026.37(o)(1)(ii) and 1026.38(t)(1)(ii), all disclosures under §§ 1026.37 and 1026.38 are required to be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in forms H-24 and H-25, respectively. Further, under §§ 1026.37(o)(3) and 1026.38(t)(3), form H-24 and form H-25, respectively, are required to be used for federally related mortgage loans. For example, because form H-24 contains the heading of the Loan Terms table required under § 1026.37(b) in a black rounded tab (as form H-24 does for certain other headings required under § 1026.37), the black rounded tab on form H-24 is required to be used for the "Loan Terms" heading under § 1026.37(o) for federally related mortgage loans. A tab that uses a white background with black font, or that does not use rounded corners as illustrated on form H-24 would not comply with § 1026.37(b). As noted above, the heading is intended to enhance visibility of the Loan Terms table required under § 1026.37(b). The Bureau believes the enhanced visibility will aid consumer understanding of these key loan terms. Indeed, the Bureau's Quantitative Study concluded that consumer participants who used the Bureau's integrated disclosures performed statistically significantly better than those who used the current disclosures with respect to the disclosure of the key loan terms in the Loan Terms table, including the loan amount, interest rate, and monthly payments. *See* Kleimann Quantitative Study Report at 53-56. The Bureau is adopting comment 37(b)-1 substantially as proposed but with minor modifications for clarity. A discussion of the specific items included in the table follows.

37(b)(1) Loan Amount

Neither TILA nor RESPA specifically requires the disclosure of the loan amount for the transaction. TILA section 128(a)(2) requires disclosure of the amount financed, of which the principal amount of the loan is the most significant component, but the section does not require a separate disclosure of the principal amount of the loan. 15 U.S.C. 1638(a)(2). Regulation Z § 1026.32(c)(5) currently requires the disclosure of the total amount the consumer will borrow, as reflected by the face amount of the note, for loans subject to HOEPA. For federally related mortgage loans under RESPA, § 1024.7(d) of Regulation X currently requires the disclosure of the loan amount in the summary table on page 1 of the RESPA GFE with the text, "Your initial loan amount is."

The Bureau stated its belief in the proposal, based on its consumer testing, that the loan amount is important to consumers to understand readily, compare, and verify the amount of credit offered to them. The Bureau further stated that the principal amount of the loan is a basic element of the transaction that should be disclosed to consumers. Pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and RESPA section 19(a), the Bureau proposed to require a disclosure of the principal amount of the transaction for closed-end transactions secured by real property (other than reverse mortgages). The Bureau proposed this requirement to effectuate the purposes of TILA to promote the informed use of credit and ensure a meaningful disclosure of credit terms to consumers. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau stated its belief in the proposal that the disclosure of the loan amount in the Loan Terms table may ensure that the features of consumer credit transactions secured by real property 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. Further, the Bureau stated that, like HUD, it believed the loan amount is necessary to understanding the transaction and its disclosure would effectuate the purposes of RESPA.

Proposed § 1026.37(b)(1) would have required creditors to disclose the "loan amount," which is defined as the amount of credit to be extended under the terms of the legal obligation. This disclosure would have been labeled "Loan Amount" to enhance visibility. The proposal stated that disclosing the loan amount may also alert the consumer to fees that are financed in addition to the amount of credit sought for the consumer's purchase, refinance, or other purpose. The Bureau did not receive any comments on proposed § 1026.37(b)(1). Accordingly, because the Bureau continues to believe that disclosure of the loan amount will effectuate the purposes of both TILA and RESPA, it is adopting § 1026.37(b)(1) as proposed, pursuant to the authority stated in the proposal and described above.

37(b)(2) Interest Rate

TILA section 128(a)(3) and (4) requires disclosure of the finance charge and the annual percentage rate, for which the interest rate is a factor in the calculation.
15 U.S.C. 1638(a)(3), (4).[266] However, the statute does not require a separate disclosure of the interest rate. Currently, Regulation Z requires creditors to disclose the interest rate only in the interest rate and payment summary table required by § 1026.18(s). For federally related mortgage loans, § 1024.7(d) of Regulation X requires that the RESPA GFE state the interest rate with the text "your initial interest rate is" in the summary table on page 1. The Bureau stated its belief in the proposal that the interest rate is an important loan term that consumers should be able to locate readily on the disclosure, because it is the basis for the periodic payments of principal and interest that the consumer will be obligated to make. The Bureau further stated in

[266] As discussed below, the finance charge disclosure is implemented in § 1026.38(o)(2). The APR disclosure is implemented in §§ 1026.37(l)(2) and 1026.38(o)(4).

the proposal that participants in the Bureau’s consumer testing used the interest rate as one of the primary factors when evaluating, comparing, and verifying loan terms.

The Bureau proposed to use its authority under TILA section 105(a) to require disclosure of the interest rate for the transaction to effectuate the purposes of TILA to promote the informed use of credit and ensure a meaningful disclosure of credit terms to consumers. In addition, the Bureau stated that, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau believes that the disclosure of the interest rate in the Loan Terms table may ensure that the features of consumer credit transactions secured by real property 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. Further, like HUD, which required disclosure of the interest rate in its good faith estimate form, the Bureau proposed to use its authority under RESPA section 19(a) to require disclosure of the interest rate, because the interest rate is important to consumer understanding of the transaction. Proposed § 1026.37(b)(2) would have required disclosure of the initial interest rate that will be applicable to the transaction, labeled the “Interest Rate.” The proposal also would have required that if the initial interest rate may adjust based on an index, the creditor must disclose the fully-indexed rate, which is defined within that paragraph. Proposed comment 37(b)(2)-1 would have provided guidance regarding how to calculate the fully-indexed rate to be disclosed.

The Bureau received many comments from industry seeking guidance on how to disclose the interest rate in an adjustable rate transaction in compliance with proposed § 1026.37(b)(2). Several national trade associations representing mortgage lenders, a large bank, and a document preparation company submitted comments based on their understanding that the proposal would have required disclosure of the fully-indexed interest rate in all circumstances for adjustable rate transactions, even if the transactions included an introductory discounted interest rate. These commenters stated that such a disclosure would be confusing for the majority of consumers who receive discounted rates that are in effect at the time of consummation. A national trade association representing banks requested guidance on how to disclose transactions without simple interest rates, such as precomputed rates, add-on interest rates, discount rates and even split interest rates (where the interest rates are precomputed based on different rates applying to different portions of the precomputed loan amount). A community bank from Oklahoma commented that the label "interest rate" may be confusing because people in that State typically refer to it as the "note rate."

With respect to the commenters that believed the proposal would have required disclosure of the fully-indexed rate in all circumstances, the Bureau did not intend to require disclosure of the fully-indexed rate in all circumstances. The Bureau notes that the language in proposed § 1026.37(b)(2) requiring disclosure of the "initial interest rate" is identical to that in the existing RESPA GFE instructions in Regulation X. See 12 CFR part 1024, app. C. The Bureau's intent in the proposal was to require disclosure of the fully-indexed rate only if the initial interest rate may adjust based on an index. In other words, the intent of proposed § 1026.37(b)(2) was to require disclosure of the fully-indexed rate where the initial rate at consummation was not known at the time of the disclosure because it depended on an external index, *i.e.*, where there was no introductory rate period. The Bureau recognizes, however, that the intent of proposed § 1026.37(b)(2) was unclear to the commenters and is making modifications to it in this final rule to conform to the language of current § 1026.18(s) for the requirement to disclose the interest rate, rather than current Regulation X.

With respect to precomputed rates, as clarified by revised final § 1026.37(b)(2), the interest disclosed in that circumstance would be the interest rate at consummation, which would be known as a function of the note. Section 1026.37(b)(2) requires disclosure of the interest rate at consummation and thus, if multiple interest rates applied to different portions of a loan's principal balance in a precomputed transaction, the disclosure required would be the one interest rate that is a composite of the different interest rates applicable to the transaction, based on the portions of the amount to which each interest rate applies. To the extent that the rate may change after consummation, the required disclosures are set forth in § 1026.37(b)(6)(ii), discussed below. With respect to the commenter's suggestion to change the label to "note rate," as discussed above, the Bureau conducted extensive consumer testing of the integrated disclosures in many different locations throughout the country and there was no evidence that consumers, in any region, were confused by the label "interest rate." Accordingly, the Bureau is adopting that label as proposed in § 1026.37(b)(2).

The Bureau is further adopting § 1026.37(b)(2) and comment 37(b)(2)-1 with modifications to provide clarity regarding the interest rate disclosure where the initial interest rate may not be known. Section 1026.37(b)(2) as revised requires disclosure of the interest rate at consummation, rather than the initial interest rate, to clarify that the date of consummation is the relevant one for purposes of the disclosure. The Bureau is further revising the second sentence of § 1026.37(b)(2) to provide that the fully-indexed rate shall be disclosed only when the interest rate at consummation is not known. The Bureau notes that this may be the case for adjustable rate loans that do not include an introductory discounted interest rate. Final § 1026.37(b)(2) also states that the fully-indexed rate means the interest rate calculated using the index value and margin at the time of consummation. The Bureau is further revising proposed comment 37(b)(2)-1 to clarify that the fully-indexed rate need not be disclosed if the contract provides for a delay in the implementation of changes in an index value, in which case any index during the delay period (lookback period) may be used.

37(b)(3) Principal and Interest Payment

TILA section 128(a)(6) requires disclosure of the number, amount, and due dates or period of payments scheduled to repay the loan. 15 U.S.C. 1638(a)(6). TILA section 128(b)(2)(C)(ii) requires the maximum principal and interest payment and examples of other potential principal and interest payments to be disclosed when the "annual rate of interest is variable… or the regular payments may otherwise be variable." 15 U.S.C. 1638(b)(2)(C)(ii). Currently, for closed-end transactions secured by real property or a dwelling, Regulation Z requires creditors to disclose the periodic principal and interest payment only in the interest rate and payment summary table required by § 1026.18(s). For federally related mortgage loans, § 1024.7(d) of Regulation X requires the RESPA GFE to contain the initial periodic payment for principal and interest and mortgage insurance with the text "Your initial monthly amount owed for principal, interest, and any mortgage insurance is."

The Bureau stated its belief in the proposal that, like the interest rate, the periodic principal and interest payment is a key loan term that consumers should be able to locate readily on the form. As described in the proposal, the Bureau's consumer testing indicated that consumers use the periodic principal and interest payment of the loan as a primary factor in evaluating and comparing a loan. The Bureau stated its belief that a specific disclosure of the periodic principal and interest payment in the Loan Terms table will assist consumers in readily evaluating, comparing, and verifying possible loan terms. As stated in the proposal, the Bureau believed that disclosing this payment would enable consumers to compare loans of one or multiple creditors based on the same measure, rather than a payment that may include estimates for escrow payments for property costs or mortgage insurance. The Bureau proposed § 1026.37(b)(3) to require the Loan Terms table to include the periodic principal and interest payment simply labeled "Principal & Interest," with an indication of the applicable unit-period. Under proposed § 1026.37(b)(3), if the initial periodic payment may adjust based on changes to an index, the payment disclosed would have been required to be based on the fully-indexed rate disclosed under proposed § 1026.37(b)(2). The proposal noted that the unit-period that is applicable to a transaction is currently described in appendix J to Regulation Z. Proposed comment 37(b)(3)-1 would have clarified that the label of the periodic principal and interest payment should reflect the appropriate unit-period for the transaction. Proposed comment 37(b)(3)-2 would have provided guidance regarding how to calculate the payment to be disclosed if the initial interest rate is adjustable based on an index.

The Bureau stated its belief in the proposal that the total periodic payment the consumer would be responsible to make to the creditor, including any required mortgage insurance and escrow payments, is also important for the consumer to consider when evaluating a loan offer. The Bureau believed that this amount allows a consumer to determine the affordability of the credit transaction and underlying real estate transaction. Accordingly, the Bureau proposed to include with the principal and interest payment a statement referring the consumer to the total periodic payment, including estimated amounts for any escrow and mortgage insurance payments, which is disclosed in the Projected Payments table under proposed § 1026.37(c), immediately below the Loan Terms table.

The Bureau proposed to use its authority under TILA section 105(a) to require disclosure of the periodic principal and interest payment, along with a reference to the total periodic payment, in the Loan Terms table to effectuate the purposes of TILA to promote the informed use of credit and ensure a meaningful disclosure of credit terms to consumers. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau stated its belief in the proposal that this disclosure may ensure that the features of consumer credit transactions secured by real property 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. Further, the Bureau proposed to use its authority under RESPA section 19(a) to require this disclosure because the disclosure will improve consumer understanding of the transaction, including settlement costs. The Bureau also proposed this requirement pursuant to its authority under section 1405(b) of the Dodd-Frank Act. The Bureau stated its belief in the proposal that this disclosure may improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

Several different industry commenters, including a large bank, a non-depository lender, and a national trade association representing mortgage lenders commented that the Loan Terms and Projected Payments table required by § 1026.37(c) should be either combined or rearranged in some manner. The commenters believed that consumers would find it confusing for the "principal and interest" disclosure in the Loan Terms table to be separated from the "mortgage insurance" and "estimated escrow" disclosures in the Projected Payments table. In addition, a GSE commented that the reference to the "Total Monthly Payment" disclosed under § 1026.37(c) as illustrated by form H-24 should instead use the same term that is used in form H-24 in the table required by § 1026.37(c), "Estimated Total Monthly Payment."

The Bureau does not believe that consumers will be confused by the Loan Terms table as proposed. The "monthly principal and interest" disclosure is repeated in the Projected Payments table and the disclosure requires a statement that refers the consumer to that table to find the total monthly payment. Indeed, as described above, the Bureau conducted extensive consumer testing of the integrated disclosures, both before and after the proposal. Consumers at the Bureau's testing were able to understand both the Loan Terms and Projected Payments tables. *See* Kleimann Testing Report at 282. However, the Bureau believes that modifying the term in the reference statement illustrated in form H-24 to use the same term as in the Projected Payments table will increase consistency within the form, and thus, has determined to modify form H-24 accordingly. In addition, to increase readability of the reference statement, the Bureau has modified the statement to use a sentence capitalization structure. The Bureau tested these modifications to the Loan Estimate with consumers in its post-proposal quantitative testing and found that consumers were better able to understand their monthly payments using the proposed Loan Estimate than using the current disclosures. *See* Kleimann Quantitative Study Report at 55.

Accordingly, the Bureau is adopting § 1026.37(b)(3) and comment 37(b)(3)-2 with conforming changes to correspond to § 1026.37(b)(2) as finalized based on the authority stated in the proposal and above. The Bureau is revising § 1026.37(b)(3) and comment 37(b)(3)-2 to clarify that disclosure of the principal and interest payment should be based on the fully-indexed interest rate only where the interest rate at consummation is not known, for example, when it is based on an external index. Comment 37(b)-1 is adopted substantially as proposed but with a minor modification for clarity. The Bureau is modifying the reference statement as illustrated by form H-24 of appendix H to Regulation Z, which is discussed in more detail in section-by-section analysis of appendix H below.

37(b)(4) Prepayment Penalty

Currently, TILA section 128(a)(11), 15 U.S.C. 1638(a)(11), and Regulation Z

§ 1026.18(k)(1) require the creditor to disclose whether or not a penalty may be imposed if the obligation is prepaid in full for a transaction that includes a finance charge computed from time to time by application of a rate to the unpaid principal balance. For federally related mortgage loans, § 1024.7(d) of Regulation X requires the summary table on page 1 of the RESPA GFE to state whether or not the loan has a prepayment penalty with the text, "Does your loan have a prepayment penalty?"

The Bureau stated in the proposal that its consumer testing indicates that consumers use the existence of a prepayment penalty as an important factor in understanding and evaluating loan offers. Accordingly, because of the importance of prepayment penalties to consumers, proposed § 1026.37(b)(4) would have required disclosure of whether the loan has a prepayment penalty in the Loan Terms table, labeled "Prepayment Penalty." As discussed below, under proposed § 1026.37(b)(7), the existence or non-existence of a prepayment penalty provision in the loan contract would be indicated by an affirmative or negative answer (designed as a simple "yes" or "no") to the question, "Does the loan have these features?" As described in the proposal, in the Bureau's consumer testing, consumers were able to use this disclosure to determine easily if the loan had a prepayment penalty.

The Bureau proposed to require disclosure of whether the transaction includes a prepayment penalty under TILA section 128(a)(11), its implementation authority under TILA section 105(a), and RESPA section 19(a). The Bureau believed, as stated in the proposal, that this additional information would promote consumer understanding of the cost of credit and more effective disclosure of the terms of the credit.

Definition of Prepayment Penalty

TILA establishes certain disclosure requirements for transactions for which a penalty is imposed upon prepayment, but does not define the term "prepayment penalty." TILA section 128(a)(11) requires that the transaction-specific disclosures for closed-end consumer credit transactions disclose whether (1) a consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge, and (2) a "penalty" is imposed upon prepayment in full if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance. 15 U.S.C. 1638(a)(11). Also, TILA section 128(a)(12) requires that the transaction-specific disclosures state that the consumer should refer to the appropriate contract document for information regarding certain loan terms or features, including "prepayment rebates and penalties." 15 U.S.C. 1638(a)(12).

Current § 1026.18(k) implements (and largely mirrors) TILA section 128(a)(11). Section 1026.18(k)(1) provides that "when an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance," the creditor must disclose "a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full." Comment 18(k)(1)-1 clarifies that such a "penalty" includes, for example, "interest charges for any period after prepayment in full is made" and a minimum finance charge, but does not include, for example, loan guarantee fees. Section 1026.18(k)(2) provides for the disclosure of a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full when an obligation includes a finance charge other than the finance charge described in § 1026.18(k)(1). Comment 18(k)(2)-1 clarifies that § 1026.18(k)(2) applies to any finance charges that do not take account of each reduction in the principal balance of an obligation, such as recomputed finance charges and charges that take account of some but not all reductions in principal.

In addition, TILA section 129(c)(1) limits the circumstances in which a high-cost mortgage may include a prepayment penalty where the consumer pays all or part of the principal before the date on which the principal is due. 15 U.S.C. 1639(c)(1)(A). In the high-cost mortgage context, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992. 15 U.S.C. 1639(c)(1)(B). Section 1026.32(d)(6) implements these TILA provisions.

As described in the proposal, although the disclosure requirements under current § 1026.18(k) apply to closed-end mortgage and non-mortgage transactions, in its 2009 Closed-End Proposal, the Board proposed to establish a new § 226.38(a)(5) for disclosure of prepayment penalties for closed-end mortgage transactions. *See* 74 FR 43334, 43413. In proposed comment 38(a)(5)-2, the Board stated that examples of prepayment penalties include charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such "balance," a minimum finance charge in a simple-interest transaction, and charges that a creditor waives unless the consumer prepays the obligation. 74 FR 43413. In addition, the Board's proposed comment 38(a)(5)-3 listed loan guarantee fees and fees imposed for preparing a payoff statement or other documents in connection with the prepayment as examples of charges that are not prepayment penalties. *Id.* The Board's 2010 Mortgage Proposal included amendments to existing comment 18(k)(1)-1 and proposed comment 38(a)(5)-2 stating that prepayment penalties include "interest" charges after prepayment in full even if the charge results from interest accrual amortization used for other payments in the transaction. *See*

75 FR 58756, 58781.[267]

The Bureau noted in the proposal that prepayment penalties were also addressed in the Board's 2011 ATR Proposal implementing sections 1411, 1412, and 1414 of the Dodd-Frank Act (codified at 15 U.S.C. 1629c), which expand the scope of the ability-to-repay requirement under TILA and establish "qualified mortgage" standards for complying with such requirement. *See* 76 FR 27482, 27491. Specifically, the Board's proposed § 226.43(b)(10) generally followed the current Regulation Z guidance on prepayment penalties (*i.e.*, comment 18(k)(1)-1) and the proposed definitions and guidance in the Board's 2009 Closed-End Proposal and 2010 Mortgage Proposal. However, the Board's 2011 ATR Proposal differed from the prior proposals and current guidance in the following respects: (1) proposed § 226.43(b)(10) defined prepayment penalty with reference to a payment of "all or part of" the principal in a transaction covered by the provision, while § 1026.18(k) and associated commentary and the Board's 2009 Closed-End Proposal and 2010 Mortgage Proposal referred to payment "in full," (2) the examples provided omitted reference to a minimum finance charge and loan guarantee fees,[268] and (3) proposed § 226.43(b)(10) did not incorporate, and the Board's 2011 ATR Proposal did not otherwise address, the language in § 1026.18(k)(2) and associated commentary regarding disclosure of a rebate of a precomputed finance charge, or the language in § 1026.32(b)(6) and associated commentary concerning prepayment penalties for high-cost mortgages.

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[267] The preamble to the Board's 2010 Mortgage Proposal explained that the proposed revisions to current Regulation Z commentary and the proposed comment 38(a)(5) from the Board's 2009 Closed-End Proposal regarding interest accrual amortization were in response to concerns about the application of prepayment penalties to certain FHA and other loans (*i.e.*, when a consumer prepays an FHA loan in full, the consumer must pay interest through the end of the month in which prepayment is made). *See* 75 FR 58586.

[268] The preamble to the Board's 2011 ATR Proposal addressed why the Board chose to omit these two items. The Board reasoned that a minimum finance charge need not be included as an example of a prepayment penalty because such a charge typically is imposed with open-end, rather than closed-end, transactions. The Board stated that loan guarantee fees are not prepayment penalties because they are not charges imposed for paying all or part of a loan's principal before the date on which the principal is due. *See* 76 FR 27416.

Based on the Bureau's consideration of the existing statutory and regulatory definitions of "penalty" and "prepayment penalty" under TILA sections 128(a) and 129(c) and §§ 1026.18(k) and 1026.32(d)(6), the Board's proposed definitions of prepayment penalty, and the Bureau's authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and, for residential mortgage transactions, 1405(b), the Bureau proposed to define "prepayment penalty" in § 1026.37(b)(4) for transactions subject to § 1026.19(e) and (f) as a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due. The proposed definition of prepayment penalty, as applicable to the transactions subject to § 1026.19(e) and (f), would have broadened the existing statutory and regulatory definitions under TILA section 128(a)(11) and § 1026.18(k), and thereby may result in more frequent disclosures of prepayment penalties to consumers than would be made under the existing definitions. Therefore, the Bureau stated its belief in the proposal that the disclosures of prepayment penalties under proposed § 1026.37(b)(4) will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and more effective advance disclosure of settlement costs. In addition, the Bureau stated that it believed the revised disclosures will ensure that the features of mortgage loan products initially and over their terms are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the loan products in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, the Bureau stated its belief in the proposal that these disclosures will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

The definition of prepayment penalty in proposed § 1026.37(b)(4) and associated commentary substantially would have incorporated the definitions of and guidance on prepayment penalty from the Board's 2009 Closed-End Proposal, 2010 Mortgage Proposal, and 2011 ATR Proposal and, as necessary, reconciled their differences. For example, the Bureau proposed that the prepayment penalty definition in proposed § 1026.37(b)(4) refer to payment of "all or part of a covered transaction's principal," rather than merely payment "in full," because it believed that knowledge of whether a partial prepayment triggers a penalty is important for consumers. Also, the Bureau proposed to incorporate the language from the Board's 2009 Closed-End Proposal and 2010 Mortgage Proposal but omitted in the Board's 2011 ATR Proposal listing a minimum finance charge as an example of a prepayment penalty and stating that loan guarantee fees are not prepayment penalties, because similar language is found in longstanding Regulation Z commentary.

Proposed comment 37(b)(4)-1 would have clarified that the disclosure of the prepayment penalty under § 1026.37(b)(4) applies to transactions where the terms of the loan contract provide for a prepayment penalty, even though it is not certain at the time of the disclosure whether the consumer will, in fact, make a payment to the creditor that would cause imposition of the penalty. This proposed comment also would have clarified that if the transaction includes a prepayment penalty, proposed § 1026.37(b)(7) sets forth the information that must be disclosed under proposed § 1026.37(b)(4). Proposed comment 37(b)(4)-2.i through -2.iv would have given the following examples of prepayment penalties: (1) a charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such "balance," even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract; (2) a fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan; (3) a minimum finance charge in a simple interest transaction; and (4) computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). Proposed comment 37(b)(4)-2.i would have further clarified that "interest accrual amortization" refers to the method by which the amount of interest due for each period (*e.g.*, month) in a transaction's term is determined and notes, for example, that "monthly interest accrual amortization" treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). The proposed comment also would have provided an example where a prepayment penalty of $1,000 is imposed because a full month's interest of $3,000 is charged even though only $2,000 in interest was earned in the month during which the consumer prepaid.

Proposed comment 37(b)(4)-3 would have clarified that a prepayment penalty does not include: (1) fees imposed for preparing and providing documents when a loan is paid in full, whether or not the loan is prepaid, such as a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan; or (2) loan guarantee fees. Proposed comment 37(b)(4)-4 would have clarified that, with respect to an obligation that includes a finance charge that does not take into account each reduction in the principal balance of the obligation (*e.g.*, precomputed finance charges), § 1026.37(b)(4) requires disclosure of whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full or part. The comment further would have clarified that if the transaction involves both a precomputed finance charge and a finance charge computed by application of a rate to an unpaid balance, disclosures about both the prepayment rebate and the prepayment penalty are made under § 1026.37(b)(4) as one disclosure to the question required by proposed § 1026.37(b)(7). The comment would have provided the example that, if in such a transaction, a portion of the precomputed finance charge will not be provided as a rebate and also a prepayment penalty based on the amount prepaid is provided for by the loan contract, both disclosures are made under proposed § 1026.37(b)(4) as one aggregate amount, stating the maximum amount and time period under proposed § 1026.37(b)(7). The comment would have further clarified that if the transaction instead provides a rebate of the precomputed finance charge upon prepayment, but imposes a prepayment penalty based on the amount prepaid, the disclosure that would have been required by proposed § 1026.37(b)(4) is an affirmative answer and the information required by proposed § 1026.37(b)(7). This proposed comment would have incorporated existing guidance in Regulation Z commentary regarding disclosure of whether the consumer is entitled to a rebate of finance charges that do not take into account each reduction in principal balance. *See* comments 18(k)-2 and -3 and 18(k)(2)-1. The Bureau also proposed comment 37(b)(4)-5, which would have referenced comment 18(k)-1 for additional guidance on prepayment penalties.

In the proposal, the Bureau stated its expectation to coordinate the definition of prepayment penalty in proposed § 1026.37(b)(4) with the definitions in the Bureau's other pending rulemakings mandated by the Dodd-Frank Act concerning ability-to-repay, high-cost mortgages under HOEPA, and mortgage servicing. Since the proposal, the Bureau has finalized each of those rulemakings and the 2013 ATR Final Rule included a definition of prepayment penalty for closed-end transactions which was cross-referenced by the 2013 HOEPA Final Rule and the 2013 TILA Mortgage Servicing Final Rule. The Bureau stated its belief in the proposal that, to the extent consistent with consumer protection objectives, adopting a consistent definition of "prepayment penalty" across its various pending rulemakings affecting closed-end mortgages will facilitate compliance.

The definition of prepayment penalty as finalized in the 2013 ATR Final Rule is substantially similar to the definition proposed in the Board's 2011 ATR proposal and thus to the one proposed in the TILA-RESPA Proposal as § 1026.37(b)(4). That definition, adopted as § 1026.32(b)(6)(i) is:

> for a closed-end credit transaction, *prepayment penalty* means a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation, provided, however, that interest charged consistent with the monthly interest accrual amortization method is not a prepayment penalty for extensions of credit insured by the Federal Housing Administration that are consummated before January 21, 2015.

There are two significant differences between the definition proposed in § 1026.37(b)(4) and the one adopted in the 2013 ATR Final Rule. First, the ATR Final Rule definition excludes a bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation. This clause was intended to permit creditors to grant consumers conditional fee waivers at closing that the creditors could recoup if the consumer repaid the loan in full early. 78 FR 6407, 6444 (Jan. 30, 2013). The 2013 ATR Final Rule included this clause after receiving comments from industry, particularly credit unions, arguing that conditional fee waivers benefitted consumers and that creditors should be able to recoup them upon a consumer's prepayment to compensate for fixed costs associated with originating the loan transaction. *Id.* The Bureau received similar comments from industry regarding the definition of prepayment penalty in proposed § 1026.37(b)(4).

The second difference in the definition of prepayment penalty adopted by the 2013 ATR Final Rule is the exclusion of interest charged consistent with the monthly interest accrual amortization method for extensions of credit insured by the FHA that are consummated before January 21, 2015. That clause was intended to address industry comments noting that credit insured by the FHA treats the loan balance as outstanding for a period of time after prepayment in full and would always meet the proposed definition of prepayment penalty. 78 FR 6407, 6445 (Jan. 30, 2013). The 2013 ATR definition of prepayment penalty in § 1026.32(b)(6)(i) excludes FHA loans consummated before January 21, 2015, based on HUD's representations to the Bureau that HUD will engage in rulemaking to end its practice of imposing interest charges on consumers for the balance of the month in which consumers prepay in full by that date. *Id.* The Bureau also received comments from industry regarding the fact that the definition of prepayment penalty in proposed § 1026.37(b)(4) would apply to all FHA loans.

In accordance with the Bureau's intent, as stated in the proposal, to coordinate the definition of prepayment penalty for the integrated disclosures with other Bureau rulemakings, and in light of the fact that the definition of prepayment penalty adopted by the 2013 ATR Final Rule addresses comments also received in response to the definition proposed in § 1026.37(b)(4), the Bureau is revising § 1026.37(b)(4) to conform to the definition of prepayment penalty in § 1026.32(b)(6)(i), as amended by the 2013 ATR Final Rule. The Bureau is adopting revised § 1026.37(b)(4) pursuant to the legal authority described above and in the proposal. Revised § 1026.37(b)(4) provides that a prepayment penalty is a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation. The Bureau is also revising comment 37(b)(4)-2.ii to similar effect. The Bureau is not including in revised § 1026.37(b)(4), however, the exclusion in § 1026.32(b)(6) for FHA loans in which interest charges are imposed on consumers for the balance of the month in which consumers prepay in full. This final rule must be implemented by August 1, 2015, which is after the January 21, 2015 date by which HUD has stated it will amend its rules related to this practice. Accordingly, the Bureau expects that by the time § 1026.37(b)(4) is effective (see part VI above for a discussion of the effective date of this rulemaking), FHA loans will no longer meet the definition of prepayment penalty as a matter of course. To the extent that HUD's rulemaking plans change, the Bureau will revisit § 1026.37(b)(4).

One industry commenter requested guidance on whether the definition of prepayment penalty includes monthly interest due when a loan is paid off. Another industry commenter objected to the Bureau's inclusion of a minimum finance charge in a simple interest transaction in proposed comment 37(b)(4)-2.iii because such charges are "soft charges" that reflect the cost of doing business. With respect to monthly interest due when a loan is paid off, interest charges already due under the terms of the legal obligation, as long as not applied to any principal after the consumer's prepayment, would not meet the definition of prepayment penalty in § 1026.37(b)(4), as adopted. Regarding "soft charges," the Bureau is not persuaded that because such a charge is a "cost of doing business," it should not be disclosed as a prepayment penalty.

The Bureau did not receive any comments regarding proposed comments 37(b)(4)-1 through 5 and is adopting them substantially as proposed, except that the Bureau is making minor modifications to comments 37(b)(4)-1 and -4 for clarity and is revising comment 37(b)(4)-2.ii to provide that the term prepayment penalty does not include a waived bona fide third-party charge imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation, in accordance with revised § 1026.37(b)(4). Similarly, in order to coordinate the definition of prepayment penalty in this final rule with other Bureau rulemakings for the reasons discussed above, the Bureau is revising comment 37(b)(4)-3 non-substantively only to conform it to comment 1026.32(b)(6)-2 as finalized in the 2013 ATR Final Rule. The Bureau sought comment in the proposal on whether a minimum finance charge should be listed as an example of a prepayment penalty and whether loan guarantee fees should be excluded from the definition of prepayment penalty. The Bureau did not receive any comments regarding loan guarantee fees. As an additional part of this effort to adopt a consistent regulatory definition of "prepayment penalty," the Bureau is also adopting certain conforming revisions to § 1026.18(k) and associated commentary, as discussed earlier in the section-by-section analysis of the revised § 1026.18(k).

For the reasons stated and based on the legal authority discussed above and in the proposal, the Bureau is adopting § 1026.37(b)(4) as revised. For the reasons stated above, the Bureau is further revising comments 37(b)(4)-1, -2.ii, -3 and -4. The Bureau is adopting comments 37(b)(4)-2.i, -2.iii, and -2.iv as proposed.

37(b)(5) Balloon Payment

TILA section 128(a)(6) requires disclosure of the number, amount, and due dates or period of payments scheduled to repay the loan. Currently, for closed-end transactions secured by real property or a dwelling, Regulation Z requires balloon payments to be disclosed only in connection with the interest rate and payment summary table required by § 1026.18(s). For federally related mortgage loans, § 1024.7(d) of Regulation X requires the RESPA GFE to state in the summary table on page 1 whether or not the loan has a balloon payment with the text, "Does your loan have a balloon payment?"

Pursuant to its authority under TILA section 128(a)(6), TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), the Bureau proposed § 1026.37(b)(5), which would have required disclosure of whether the credit transaction requires a balloon payment, as defined within the provision. This disclosure would have been provided in the Loan Terms table, labeled "Balloon Payment." As discussed below, under proposed § 1026.37(b)(7), the existence or non-existence of a balloon payment provision is indicated by a "yes" or "no" answer to the question, "Does the loan have these features?" In the proposal, the Bureau stated that in its consumer testing, consumers were able to determine readily whether a loan had a balloon payment. The Bureau's consumer testing further indicated that consumers consider whether a loan has a balloon payment to be an important factor in evaluating loans. The Bureau stated its belief in the proposal that this disclosure will effectuate the purposes of TILA and RESPA because it will promote the informed use of credit and assure a meaningful disclosure to consumers, and thus, will benefit consumers and the public and result in more effective advance disclosure.

Definition of Balloon Payment

Sections 1412 and 1432(b) of the Dodd-Frank Act both define "balloon payment" as "a scheduled payment that is more than twice as large as the average of earlier scheduled payments." These definitions are incorporated into TILA sections 129C(b)(2)(A)(ii) and 129(e), respectively. 15 U.S.C. 1639c(b)(2)(A)(ii), 1639(e). Regulation Z § 1026.18(s)(5)(i), however, defines "balloon payment" as "a payment that is more than two times a regular periodic payment."

The Board's 2011 ATR Proposal implementing section 1412 of the Dodd-Frank Act incorporates Regulation Z's existing definition of "balloon payment" in § 1026.18(s)(5)(i) rather than the definition in section 1412. *See* proposed § 226.43(e)(2)(i)(C), 76 FR 27390, 27484. The Board noted that this definition is substantially similar to the statutory one, except that it uses as its benchmark any regular periodic payment rather than the average of earlier scheduled payments. 76 FR 27455. The Board also reasoned that incorporating the Regulation Z, rather than Dodd-Frank Act, definition of "balloon payment" facilitates compliance by affording creditors a single definition of the term within Regulation Z. *Id.* at 27456.

As described in the proposal, by defining "balloon payment" in the 2011 ATR Proposal based on the Regulation Z definition, the Board proposed to adjust the Dodd-Frank Act statutory definition. In doing so, the Board stated that it was relying on TILA section 105(a) authority to make such adjustments for all or any class of transactions as in the judgment of the Board are necessary or proper to facilitate compliance with TILA. *Id.*; 15 U.S.C. 1604(a). The class of transactions for which the adjustment was proposed encompassed all transactions covered by the 2011 ATR Proposal, *i.e.*, closed-end consumer credit transactions that are secured by a dwelling. The Board, however, solicited comment on the appropriateness of the proposed adjustment. The Board also stated that the proposed adjustment was supported by the Board's authority under TILA section 129B(e) to condition terms, acts, or practices relating to residential mortgage loans that the Board finds necessary or proper to facilitate compliance. 15 U.S.C. 1639b(e).

In view of the different definitions of "balloon payment" between the Dodd-Frank Act and Regulation Z and the approach taken by the Board in the 2011 ATR Proposal, and based on the Bureau's authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau proposed a definition of “balloon payment” in § 1026.37(b)(5) that largely incorporates the existing Regulation Z definition in § 1026.18(s)(5)(i), *i.e.*, a payment that is more than two times a regular periodic payment. For the reasons discussed below, the Bureau stated its belief in the proposal that the proposed definition will promote the informed use of credit and facilitate compliance with TILA, consistent with TILA section 105(a). In addition, the Bureau stated its belief that this definition will enhance consumer understanding of the costs, benefits, and risks associated with the transaction in light of the facts and circumstances (consistent with Dodd-Frank Act section 1032(a)), and improve consumers’ awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public (consistent with Dodd-Frank Act section 1405(b)).

The proposed definition in § 1026.37(b)(5) would have revised the current regulatory language in § 1026.18(s)(5)(i) to state that a balloon payment cannot be a regular periodic payment. This revision was intended to prevent a regular periodic payment following a scheduled or permitted payment increase under the terms of a loan contract (*e.g.*, based on a rate adjustment under an adjustable rate loan) from being characterized as a balloon payment. The proposed definition would have applied to all transactions subject to proposed § 1026.19(e). The Bureau stated in the proposal that it recognized that this proposed definition deviates from that prescribed in the Dodd-Frank Act. However, for the reasons set forth in the 2011 ATR Proposal, the Bureau stated its belief that adopting a consistent definition within Regulation Z will promote the informed use of credit and facilitate compliance and, therefore, will also benefit consumers and the public. *See* 76 FR 27456.

Proposed comment 37(b)(5)-1 would have clarified that the “regular periodic payment” used to determine whether a payment is a “balloon payment” for purposes of § 1026.37(b)(5) is the payment of principal and interest (or interest only, depending on the loan features) payable under the terms of the loan contract for two or more unit-periods in succession. The comment also would have clarified that all regular periodic payments during the loan term are used to determine whether a particular payment is a balloon payment, regardless of whether the regular periodic payments change during the loan term due to rate adjustments or other payment changes permitted or required under the loan contract. In other words, proposed comment 37(b)(5)-1 would have clarified that if the particular payment is more than two times any one regular periodic payment during the loan term, it is disclosed as a balloon payment under § 1026.37(b)(5) unless the particular payment itself is a regular periodic payment. Proposed comment 37(b)(5)-1.i would have given an example of a step-rate mortgage with two different regular periodic payment amounts. Proposed comment 37(b)(5)-1.ii would have clarified the definition of "regular periodic payment" in the context of a loan with an adjustable rate, where, under the terms of the loan contract, the regular periodic payments may increase after consummation, but the amounts of such payment increases (if any) are unknown at the time of consummation. In such instance, the proposed comment would have clarified that the "regular periodic payments" are based on the fully-indexed rate, except as otherwise determined by any premium or discounted rates, the application of any interest rate adjustment caps, or any other known, scheduled rates under the terms specified in the loan contract. The proposed comment also would have referred to the analogous guidance provided in current comments 17(c)(1)-8 and -10, and given an example of an adjustable rate mortgage with two different periodic payment amounts.

Proposed comment 37(b)(5)-1.iii would have clarified that for a loan with a negative amortization feature, the "regular periodic payment" does not take into account the possibility that the consumer may exercise an option to make a payment greater than the minimum scheduled periodic payment. Proposed comment 37(b)(5)-1.iv would have clarified that, for purposes of § 1026.37(c), § 1026.37(b)(5) governs the threshold determination of whether a loan has a balloon payment feature, but § 1026.37(c) governs the disclosure of balloon payments in the "Projected Payments" table under that section. The definition of balloon payment in proposed § 1026.37(b)(5) would have included the payments of a single or double payment transaction. Proposed comment 37(b)(5)-2 would have provided clarification regarding such single and double-payment transactions, which require a single payment due at maturity or only two payments during the loan term, and do not require regular periodic payments. The comment would have clarified that a single payment transaction does not have regular periodic payments, because regular periodic payments must be made two or more unit-periods in succession (s*ee* proposed comment 37(b)(5)-1, described above). The comment would have further clarified that while a loan with only two scheduled payments, depending on the circumstances, may have regular periodic payments (*e.g.*, if the two payments are made during the last month of years one and two of a two-year loan term), there is no third payment that could potentially be the balloon payment (*i.e.*, a payment that is more than twice the amount of the regular periodic payments). The Bureau stated its belief in the proposal that the payments of such transactions are essentially equivalent, economically and practically, from the perspective of a consumer, to a balloon payment. The proposed comment would have clarified that notwithstanding the fact that there is no regular periodic payment to compare such single or double payments to, any payment in a single payment transaction or a transaction with only two scheduled payments is a "balloon payment" under § 1026.37(b)(5). In the proposal, the Bureau sought comment on whether the definition of balloon payment in proposed § 1026.37(b)(5) should be revised to exclude any particular type of payment.

A document preparation company commented that the clarification in proposed comment 37(b)(5)-1 that a payment is a balloon payment if it is more than two times *any one* regular periodic payment is a departure from the existing definition of balloon payment in § 1026.18(s)(5) which defines balloon payment as one that is more than two times *a* regular periodic payment. The commenter requested that the definition adopted in § 1026.37(b)(5) conform with the existing definition. A document preparation company requested guidance on how to disclose an adjustable rate transaction, which does not adjust the regular periodic payment but would, if the rate increased, increase only the final payment. In response to the Bureau's solicitation of comments on whether any particular payments should be excluded from the definition, several industry commenters noted that the proposed balloon payment definition and commentary would render a final payment that is only slightly higher than a regular periodic payment because of rounding a balloon payment. Those commenters opined that such a result would be confusing to the consumer and could produce inconsistent results within different sections of the integrated disclosures because proposed comment 37(c)(1)(i) treated such rounded final payments as regular periodic payments for purposes of the Projected Payments table.

In the proposal, the Bureau stated its intent to coordinate the definition of balloon payment in proposed § 1026.37(b)(5) with the definitions of balloon payment in the Bureau's other pending rulemakings under the Dodd-Frank Act concerning ability-to-repay and high-cost mortgages under HOEPA. As noted above regarding prepayment penalty, since the proposal, the Bureau has issued both the 2013 ATR Final Rule and the 2013 HOEPA Final Rule. The 2013 ATR Final Rule did not include its own definition of balloon payment but instead cross-referenced the existing definition in § 1026.18(s)(5)(i). The 2013 HOEPA Final Rule revised another definition of balloon payment found in § 1026.32(d)(1), but the final HOEPA definition in that section is identical to the one in existing § 1026.18(s)(5)(i). In order to coordinate with and use the same definition of balloon payment across these rulemakings, the Bureau is revising proposed § 1026.37(b)(5) to delete the requirement that a balloon payment cannot itself be a periodic payment. The definition of balloon payment as adopted in § 1026.37(b)(5) is now identical to the existing definition in § 1026.18(s)(5)(i). The Bureau is retaining the clarification that a balloon payment cannot itself be a periodic payment in final comment 37(b)(5)-1, however, because it believes such fact is inherent in its definition.

With respect to the comment that the proposed definition of balloon payment is a departure from the existing definition in § 1026.18(s)(5)(i), the Bureau does not believe that the definition as adopted § 1026.37(b)(5), and as clarified in comment 37(b)(5)-1, differs in any material way from that in existing § 1026.18(s)(5)(i). Indeed, the definition of balloon payment as finalized in § 1026.37(b)(5) is identical to that in § 1026.18(s)(5)(i). Moreover, the commenter admitted that the existing definition in § 1026.18(s)(5)(i) is not clear regarding which payment is the baseline for purposes of the balloon payment definition when periodic payments change over time, such as where the transaction has an adjustable rate. The Bureau interprets existing § 1026.18(s)(5)(i) as defining balloon payment as a payment that is more than two times *any one* periodic payment. The Bureau is simply clarifying that understanding in comment 37(b)(5)-1 for purposes of the integrated disclosure requirements.

As noted in the proposal, the Bureau recognized that these additional clarifications may result in more payments being disclosed as balloon payments than under the current regulatory definition. The Bureau stated its belief in the proposal, however, that more frequent disclosure of balloon payment terms facilitates the informed use of credit, ensures that the features of mortgage loan products initially and over their terms are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the loan products in light of the facts and circumstances, and improves consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public. Furthermore, the Bureau stated in the proposal its belief that a payment that is twice any one regular periodic payment using the regulatory definition, as revised in the proposed rule, would be equal to or less than a payment that is twice the average of earlier scheduled payments using the statutory definition.

The Bureau notes that the range of scheduled payment amounts under the first approach is more limited and defined. For example, if the regular periodic payment is $200, a payment of greater than $400 would constitute a balloon payment. Under the statutory definition, however, the threshold amount for a balloon payment could be greater than $400 if, for example, the regular periodic payments were increased by $100 each year. Under this scenario, the amount constituting a "balloon payment" could increase with the incremental increase of the average of earlier scheduled payments. The Bureau stated its belief in the proposal that under the existing regulatory definition, as revised by the proposed rule, consumers would have a better understanding of the highest possible regular periodic payment in a repayment schedule and may experience less "payment shock" as a result. Therefore, the Bureau stated its belief that the existing regulatory definition may better protect consumers and would be in their interest. In addition, the Bureau stated its belief in the proposal that the definition of "balloon payment" based on the existing regulatory definition would facilitate and simplify compliance by eliminating the need to average earlier scheduled payments.

To address the commenter's concern about disclosing adjustable rate transactions that do not adjust the regular periodic payment but only increase the final payment, the Bureau is revising comment 37(b)(5)-1.ii to clarify that the amount of the final payment for purposes of the balloon payment determination is based on the fully-indexed rate, except as otherwise determined by any premium or discounted rate caps, or any other known, scheduled rates under the terms specified in the loan contract.

With respect to the comment that the proposed definition of balloon payment could include rounded final payments, the Bureau believes that disclosing a final payment that differs from a regular periodic payment only because of rounding as a balloon payment would not be beneficial for consumers. Accordingly, the Bureau is adding comment 37(b)(5)-1.iv, which tracks the language in comment 37(c)(1)(i)-1 and clarifies that a final payment that differs from other regular periodic payments because of rounding to account for payment amounts including fractions of cents is still a regular periodic payment and need not be disclosed as a balloon payment.

For the reasons discussed, and pursuant to the authority discussed in the proposal and above, the Bureau is adopting § 1026.37(b)(5) as revised to conform the definition of balloon payment with that in existing § 1026.18(s)(5)(i). The Bureau is adopting comment 37(b)(5)-1 substantially as proposed but with minor modifications for clarity. For the reasons discussed above, the Bureau is revising comment 37(b)(5)-1.ii to address an adjustable interest rate loan that adjusts only the final payment and not the regular periodic payments. As discussed above, the Bureau is adopting new comment 37(b)(5)-1.iv to address a final payment that differs from other regular periodic payments because of rounding. The Bureau did not receive any comments regarding proposed comments 37(b)(5)-1.i, -1.iii, -1.iv or -2 and is adopting them as proposed, except that proposed comment 37(b)(5)-1.iv is renumbered as comment 37(b)(5)-1.v.

37(b)(6) Increases after Consummation

TILA section 128(b)(2)(C)(ii) requires, for closed-end credit transactions secured by a dwelling in which the interest rate or payments may vary, the disclosure of examples of adjustments to the regular required payment based on changes in the interest rates, including the maximum payment amount of the regular required payments based on the maximum interest rate under the contract. TILA section 128(b)(2)(C)(ii) also requires the Bureau to conduct consumer testing to determine the appropriate format for providing the disclosures required under this subparagraph so that such disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period and will end on a certain date, that payments may adjust afterwards to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount. Currently, Regulation Z's disclosures for closed-end credit transactions secured by real property or a dwelling require information about whether the interest rate, periodic principal and interest payment, and loan amount can change. The disclosures are given in the interest rate and payment table required by § 1026.18(s). For federally related mortgage loans, § 1024.7(d) of Regulation X requires this information to be disclosed in the summary table on page 1 of the RESPA GFE, as affirmative or negative answers to the questions "Can your interest rate rise," "Even if you make payments on time, can your loan balance rise," and "Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?"

As discussed above and described in the proposal, the Bureau conducted consumer testing of prototype mortgage disclosures over ten rounds prior to issuing the TILA-RESPA Proposal. During each round of testing, consumers placed significant emphasis when evaluating loans on whether the loan amount, interest rate, or periodic principal and interest payment could increase, the amount and timing of such increases, and whether they were scheduled increases or only potential increases. Accordingly, the Bureau stated its belief in the proposal that this information should be disclosed so that consumers can easily find and understand it.

The Bureau proposed § 1026.37(b)(6) to require that this information be disclosed in the Loan Terms table. Specifically, proposed § 1026.37(b)(6) would have required disclosure of whether the amounts required to be disclosed by § 1026.37(b)(1) through (3) may increase. If those amounts may increase, the creditor also would have been required to disclose, as applicable: (i) the maximum principal balance for the transaction and the date when the last payment for which the principal balance is permitted to increase will occur; (ii) the frequency of interest rate adjustments, the date when the interest rate begins to adjust, the maximum interest rate under the terms of the transaction, and the first adjustment that could result in the maximum interest rate; (iii) the frequency of adjustments to the periodic principal and interest payment, the date when the principal and interest payment begins to adjust, the maximum principal and interest under the transaction, and the first adjustment that can result in the maximum principal and interest payment; and (iv) the periods of any features that permit the periodic principal and interest payment to adjust without an adjustment to the interest rate, such as information about interest only periods. The Bureau also stated in the proposal that it understands from industry feedback provided in connection with the Bureau’s stakeholder outreach that some adjustable rate loans, which may be more prevalent in the community bank market, may be structured so that the periodic principal and interest payment is fixed and increases in the interest rate increase the loan term instead of the payment. Accordingly, the information required by proposed § 1026.37(b)(6)(ii) also would have included a statement of that fact for transactions that contain such a feature.

The Bureau proposed a format that provides this information as affirmative or negative answers to one comprehensive question, "Can this amount increase after closing?" Under the proposal, the answers to this question would have been capitalized and in bold font. In addition, bullet-pointed text immediately to the right of these answers would have provided the maximum amounts, frequencies of changes, references to more detailed information disclosed elsewhere on the form, and other relevant information. Bold text would have been used for important information in these statements, to enable consumers to see it quickly. Proposed form H-24 of appendix H to Regulation Z would have illustrated the disclosure of such information, including the bullet-pointed text required and the portions of such text that are to be bolded. The Bureau tested prototype versions of this table in its consumer testing prior to issuing the proposal. During testing, consumers were able to understand and use this information in the proposed format when evaluating and comparing terms of credit. Based on these results, the Bureau stated its belief in the proposal that this format will enable consumers to find the information readily, to use it for evaluating and comparing terms of credit, and to understand the information.

Pursuant to TILA section 128(b)(2)(C)(ii) and the Bureau's authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and Dodd-Frank Act 1405(b), the Bureau proposed § 1026.37(b)(6) to require this information in the Loan Terms table and in the format required to be used by proposed § 1026.37(o). In the proposal, the Bureau stated that it believed that this disclosure will effectuate the purposes of TILA because it will promote the informed use of credit and assure a meaningful disclosure to consumers, and thus, will benefit consumers and the public. The Bureau stated its belief in the proposal that this information improves consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau also stated its belief that, consistent with Dodd-Frank Act section 1032(a), this requirement may 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. In addition, like HUD, the Bureau stated in the proposal that it believed this information is important to consumer understanding of the transaction and as a result, will promote more effective advance disclosure of settlement costs and should be provided on the disclosure.

A document preparation company and a national trade association representing mortgage lenders requested guidance on how to disclose interest rates that adjust at multiple intervals. A document preparation company also requested guidance on how to disclose preferred rate transactions, third-party buydowns, and construction loans with different features for the construction and permanent phases under § 1026.37(b)(6). A document preparation company requested guidance on whether the bullet points and bolded font used in form H-24 at appendix H to Regulation Z are required by § 1026.37(b)(6). The commenter requested that such formatting not be required because both bullets and selective bolding can be difficult and expensive to program.

With respect to interest rates that adjust at multiple intervals, consistent with the Bureau's revisions to the loan product disclosure required by § 1026.37(a)(10) and described in the section-by-section analysis of § 1026.37(a)(10) above, the Bureau is adding commentary to § 1026.37(b)(6)(ii) to clarify that if there are multiple periods of adjustment in a transaction, § 1026.37(b)(6)(ii) requires disclosure of only the frequency of the first interest rate adjustment.

Regarding disclosure of preferred rate transactions, consistent with existing commentary to § 1026.17(c), the disclosures required by § 1026.37(b)(6) should reflect the terms of the legal obligation. Similarly, with regard to third-party buydowns, existing comment 17(c)-3 governs disclosure of such transactions and would require disclosure of the rate reflected in the credit contract between the consumer and the creditor. If the rate disclosed pursuant to comment 17(c)-3 can change after consummation, § 1026.37(b)(6) requires disclosure of that fact.

Lastly, regarding construction-to-permanent loans that contain multiple transaction phases, existing § 1026.17(c)(6)(ii) and its accompanying commentary address how to disclose construction-to-permanent transactions. Section 1026.17(c)(6)(ii) provides that "[w]hen a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction." Accordingly, a creditor may disclose a construction-to-permanent loan as separate transactions, with different disclosures for § 1026.37(b)(6) regarding whether the interest rate increases after consummation. Should the creditor choose to treat the construction-to-permanent transaction as one transaction, however, § 1026.37(b)(6) would require disclosure of whether the rate, during any phase of the complete transaction, would increase from the rate at consummation.

The Bureau is adding commentary to § 1026.37(b)(6)(iii) to clarify that if there are multiple periods of adjustment in a transaction, § 1026.37(b)(6)(iii) requires disclosure of the frequency of only the first adjustment to the periodic principal and interest payment. The Bureau is further clarifying that § 1026.37(b)(6)(iii) requires that the first adjustment be disclosed, regardless of the basis for the first adjustment. In other words, where the periodic principal and interest payment may change because of more than one factor and such adjustments are on different schedules, the frequency disclosed is the adjustment of whichever factor adjusts first. For example, where the interest rate for a transaction is fixed until year six and then adjusts every three years but also has a negative amortization feature that ends in year seven, § 1026.37(b)(6)(iii) requires disclosure that the interest rate will adjust every three years starting in year six, because the periodic principal and interest payment adjusts based on the interest rate before it adjusts based on loan amount. The Bureau is further adding comment 37(b)(6)-1 which cross-references comment 37(a)(10)-3 for guidance on how to disclose adjustments after consummation that occur after a period that does not equate to a number of whole years.

For the reasons discussed and based on the legal authority discussed above and in the proposal, the Bureau is adopting § 1026.37(b)(6), (b)(6)(ii), and (b)(6)(iii) substantially as proposed, with minor modifications for clarity. The Bureau is revising § 1026.37(b)(6)(i) to move to comment 37(b)(6)(i)-1 the particular phrases that comply with the requirement to indicate in the Loan Terms table whether the maximum principal balance is potential or scheduled to occur. The Bureau is further revising the phrase that describes a scheduled increase to "Goes as high as" rather than "Will go as high as" to use more plain language for the integrated disclosures. The Bureau is also adding comments 37(b)(6)(ii)-1 and 37(b)(6)(iii)-1 to clarify the phrases that comply with the requirements of § 1026.37(b)(6)(ii) and (iii), respectively, and to include additional information regarding changes to the interest rate and periodic principal and interest payment.

As addressed more fully in § 1026.37(o)(1)(ii) and § 1026.38(t)(1)(ii), all disclosures must be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-24. And under §§ 1026.37(o)(3) and 1026.38(t)(3), forms H-24 and H-25, respectively, are required to be used for federally related mortgage loans. Because form H-24, as illustrated by forms H-24(B) through (F), contains bullet points and bolded font in the Loan Terms table described in § 1026.37(b)(6), and the form is required to be used under § 1026.37(o) for federally related mortgage loans, the bullet points and bolded font are required for such transactions. Comments 37(b)(6)(i)-1, 37(b)(6)(ii)-1, and 37(b)(6)(iii)-1 provide additional guidance that the formatting of the phrases in form H-24 of appendix H is required for federally related mortgage loans pursuant to § 1026.37(o)(3).

In the Bureau's pre-proposal consumer testing of the integrated disclosures, consumers found the disclosures required by § 1026.37(b)(6) beneficial. *See* Kleimann Testing Report at 161. The Bureau's Quantitative Study of the integrated disclosures concluded that the format of the disclosures performed significantly better than the current disclosure format at enabling consumers to identify and compare the key loan terms, including the interest rate and monthly payment. *See* Kleimann Quantitative Study Report at 67. Accordingly, the Bureau believes that the benefits to consumers of this formatting which highlights the relevant information outweighs the cost of implementation. Further, for the reasons discussed, the Bureau is adding comments 37(b)(6)-1, 37(b)(6)(ii)-2, and 37(b)(6)(iii)-2 to clarify how to disclose periods that are not in whole years, interest rates that adjust at multiple intervals, and periodic principal and interest payments that adjust at multiple intervals.

37(b)(7) Details about Prepayment Penalty and Balloon Payment

Currently, for closed-end credit transactions secured by real property or a dwelling, § 1026.18(k) of Regulation Z does not require the disclosure of the maximum prepayment penalty that may be charged. While § 1026.18(s) currently requires the balloon payment that may be charged on a loan to be disclosed, it is not required to be disclosed with other key terms of the transaction. For federally related mortgage loans, § 1024.7(d) of Regulation X currently requires the maximum prepayment penalty and balloon payment in the summary table on page 1 of the RESPA GFE with the text, "your maximum prepayment penalty is $__" and "you have a balloon payment of $__ due in __ years."

Proposed § 1026.37(b)(7) would have required the information in proposed § 1026.37(b)(4) and (5) to be disclosed as an affirmative or negative answer to the question "Does the loan have these features?" The section also would have required disclosure of the maximum prepayment penalty, the period in which a prepayment penalty may be imposed, the maximum amounts of any balloon payments and the dates of such payments. Like the information required to be disclosed by proposed § 1026.37(b)(6), the format required for this information by proposed § 1026.37(o) emphasizes the maximum amounts by using bold text, to enable consumers to find these amounts quickly. Proposed comment 37(b)(7)(i)-1 would have provided guidance regarding calculating the maximum amount of the prepayment penalty.

In the Bureau's consumer testing prior to the proposal, consumers were able to use this disclosure to determine easily if the loan had a prepayment penalty, the maximum amount, and the period during which the penalty applied, and the amount and time of a balloon payment. *See* Kleimann Testing Report at 121-2. As described in the proposal, the Bureau's consumer testing indicated that consumers place significant emphasis when evaluating loans on the potential for large balloon or prepayment penalty amounts.

The Bureau proposed to use its authority under TILA sections 105(a), Dodd-Frank Act section 1032(a), and RESPA section 19(a) to require disclosure of this information in the Loan Terms table of the Loan Estimate. In the proposal, the Bureau stated its belief that placing these details about prepayment penalties and balloon payments in the summary table with bold text for the maximum amounts allows consumers to find this information easily, enabling consumers to understand and evaluate loans, promoting meaningful disclosure of credit terms to consumers. The Bureau further stated that it believed this disclosure will effectuate the purposes of TILA because it will promote the informed use of credit and assure a meaningful disclosure to consumers, and thus, will benefit consumers and the public. In addition, the Bureau stated in the proposal that, like HUD, it believed that this information is important to consumer understanding of the transaction and as a result, will promote more effective advance disclosure of settlement costs and should be provided on the disclosure.

A national trade association representing mortgage lenders requested guidance regarding whether to use a premium or discounted interest rate, rather than the fully-indexed rate, when calculating the maximum prepayment penalty pursuant to § 1026.37(b)(7)(i). A large bank requested guidance on how to calculate the maximum prepayment penalty, asking whether it is determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such balance, as described in comment 37(b)(4)-2.i. Regarding whether to use the premium or discounted interest rate, as stated in proposed comment 37(b)(7)(i)-1, the maximum prepayment penalty must be calculated based on the terms of the legal obligation and thus the interest used to calculate the disclosure required by § 1026.37(b)(7)(i) would be the discounted interest rate if it were in effect during the prepayment penalty period. With respect to treating the loan balance as outstanding after prepayment in full, as stated in proposed comment 37(b)(7)(i)-1, the disclosure is the maximum possible amount of the prepayment penalty and thus would be calculated assuming the consumer prepaid in full on the first day of the period for which the loan balance would be treated as outstanding.

The Bureau continues to believe that disclosure of the maximum prepayment penalty will effectuate the purposes of both TILA and RESPA. Accordingly, the Bureau is adopting § 1026.37(b)(7) substantially as proposed but with minor revisions for clarity, based on the legal authority discussed above and in the proposal. Based on that same authority, the Bureau is adopting comment 37(b)(7)(i)-1 substantially as proposed, except that it is removing the example for a negatively amortizing loan because a prepayment penalty generally would be prohibited for such a transaction under § 1026.43(g) as adopted by the 2013 ATR Final Rule. The Bureau is further adding comments 37(b)(7)(i)-2 and 37(b)(7)(ii)-1 to clarify the phrases that must be used in the loan terms table to indicate the additional information required to be disclosed by § 1026.37(b)(7)(i) regarding the prepayment penalty and by § 1026.37(b)(7)(ii) regarding the balloon payment, respectively. Comment 37(b)(7)(ii)-1 also clarifies that if a transaction includes more than one balloon payment, the disclosure required is the highest balloon payment and the due date of that payment.

37(b)(8) Timing

As described in the proposal, the Bureau believes the references to the dates required to be disclosed by proposed § 1026.37(b)(6) and (7) are easily understood by consumers if disclosed in whole years. The prototype mortgage disclosures used at the Bureau's consumer testing displayed these dates as years, and consumers were able to understand and evaluate the risks posed by these maximum amounts. The Bureau stated its belief in the proposal that this unit of time provides a frame of reference to consumers that they use more regularly and that is easier to understand than "payments" or high-number values of "months," such as 60 months.

The Bureau proposed § 1026.37(b)(8), pursuant to its authority under TILA section 105(a), Dodd-Frank section 1032(a), and RESPA section 19(a), which would have required the information required to be disclosed by § 1026.37(b)(6) and (7) to be disclosed by stating the number of the year in which the payment or adjustment occurs, counting from the date that interest for the regularly scheduled periodic payment begins to accrue. Proposed comment 37(b)(8)-1 would have provided examples of how to disclose dates using the timing rules of proposed § 1026.37(b)(8). The Bureau stated its belief in the proposal that this disclosure provides a meaningful disclosure of credit terms, promotes the informed use of credit by consumers, and may ensure that the features of consumer credit transactions secured by real property 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.

Several national trade associations representing mortgage lenders commented that proposed § 1026.37(b)(8) defined "year" differently than in comment 37(c)(3)(ii)-1 which provided guidance regarding the completion of the projected payments table required by § 1026.37(c). These commenters suggested that disclosing the same rate and payment adjustments under the Loan Terms section as occurring in different years than in the Projected Payments table would be confusing for consumers. The Bureau believes that the likelihood is low that these disclosures would require the statement of a different year, because changes in the periodic payment would generally occur only one month after the interest rate change occurred for most transactions, which month would fall within the same 12-month period. However, the Bureau believes that using different timing conventions for certain disclosure requirements may increase compliance burden. Accordingly, the Bureau is revising § 1026.37(b)(8) to conform the applicable timing conventions to § 1026.37(c) and to add new § 1026.37(b)(8)(ii) and (iii). As revised, § 1026.37(b)(8)(ii) provides that for the disclosures required by § 1026.37(b)(6)(i), with respect to increases in the loan amount, by § 1026.37(b)(6)(iii), with respect to increases in the periodic payment, and by § 1026.37(b)(7)(ii), with respect to the date of a balloon payment, the date disclosed is the year in which the event occurs, counting from the due date of the initial periodic payment. This conforms to § 1026.37(c)(3)(ii) with respect to the timing convention in the Projected Payments table. The Bureau is further adding § 1026.37(b)(8)(iii) to provide that for the disclosure required by § 1026.37(b)(7)(i) with respect to the period of a prepayment penalty, the date disclosed is the year in which the event occurs, counting from the date of consummation. The Bureau is making this revision to correspond with the timing convention for the prohibition on prepayment penalties in the 2013 ATR Final Rule which provides in § 1026.43(g)(2) that a prepayment penalty must not apply after the three-year period following consummation.

The Bureau is retaining the timing convention proposed in § 1026.37(b)(8), renumbered as § 1026.37(b)(8)(i) and revised to apply only the disclosure required by § 1026.37(b)(6)(ii), related to the interest rate. Final § 1026.37(b)(8)(i) requires disclosure of changes in the consumer's interest rate to be disclosed as the year in which the event occurs, counting from the date that interest for the first scheduled periodic payment begins to accrue after consummation. The Bureau is adopting §1026.37(b)(8) as revised.

The Bureau is also revising proposed comment 37(b)(8)-1 to reflect the revisions described above and to provide examples for the disclosures required by § 1026.37(b)(6). The Bureau is further revising comment 37(b)(8)-1 in response to requests for guidance on how to disclose dates that are not whole years. Accordingly, comment 37(b)(8)-1, as revised, clarifies how to disclose adjustments that occur after a period of whole years. The Bureau is also adding comment 37(b)(8)-2, which cross-references comment 37(a)(10)-3 and clarifies how to disclose adjustments that occur after a number of months less than 24 that do not equate to a number of whole years or after a number of days. For the reasons discussed and pursuant to the legal authority described in the proposal and above, the Bureau is adopting § 1026.37(b)(8) and comments 37(b)(8)-1 as revised and adding comment 37(b)(8)-2.

37(c) Projected Payments

TILA section 128(a)(6) requires creditors to disclose the number, amount, and due dates or period of payments scheduled to repay the total of payments. 15 U.S.C. 1638(a)(6). TILA section 128(b)(2)(C)(ii) requires the disclosure of certain payment-related information for closed-end variable-rate transactions, or transactions where the regular payment may otherwise be variable, that are secured by a dwelling, including examples of payments. 15 U.S.C. 1638(b)(2)(C)(ii). Specifically, creditors must provide examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. *Id.* Among the examples required is one that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract. *Id.* TILA section 128(b)(2)(C)(i) also provides that these examples must be in conspicuous type size and format and that the payment schedule be labeled "Payment Schedule: Payments Will Vary Based on Interest Rate Changes." Section 128(b)(2)(C)(ii) requires the Bureau to conduct consumer testing to determine the appropriate format for providing the disclosures to consumers so that the disclosures can be easily understood.

In addition, TILA section 128(a)(16)(A), added to TILA by section 1419 of the Dodd-Frank Act, provides that, for variable-rate residential mortgage loans for which an escrow account will be established, the creditor must disclose both the initial monthly principal and interest payment, and the initial monthly principal and interest payment including any amount deposited in an escrow account for the payment of applicable taxes, insurance, and assessments. 15 U.S.C. 1638(a)(16)(A). New TILA section 128(a)(16)(B) also requires that, for variable-rate residential mortgage loans for which an escrow account will be established, the creditor disclose the amount of the fully-indexed monthly payment due under the loan for the payment of principal and interest, and the fully-indexed monthly payment including any amount deposited in an escrow account for the payment of applicable taxes, insurance, and assessments. 15 U.S.C. 1638(a)(16)(B). TILA section 128(b)(4)(A), added by section 1465 of the Dodd-Frank Act, provides that, in the case of any consumer credit transaction secured by a first mortgage on the principal dwelling of the consumer, other than an open-end credit plan or reverse mortgage, for which an escrow account has been or will be established, the disclosures required by TILA section 128(a)(6) must take into account the amount of any monthly payment to such account, in accordance with section 10(a)(2) of RESPA.[269] 15 U.S.C. 1638(b)(4)(A); 12 U.S.C. 2609(a)(2). New TILA section 128(b)(4)(B) generally requires creditors to take into account the taxable assessed value of the property during the first year after consummation, including the value of any improvements constructed or to be constructed on the property, if known, and the replacement costs of the property for hazard insurance, when disclosing taxes and insurance escrows pursuant to TILA section 128(b)(4)(A). 15 U.S.C. 1638(b)(4)(B).

Current § 1026.18(s) implements the requirements of TILA sections 128(a)(6) and 128(b)(2)(C) for all closed-end transactions secured by real property or a dwelling, other than transactions secured by the consumer’s interest in a timeshare plan described in 11 U.S.C.

[269] Section 10(a)(2) of RESPA prohibits the lender, over the life of the escrow account, from requiring the borrower to make payments to an escrow account that exceed one-twelfth of the total annual escrow disbursements that the lender reasonably anticipates paying from the escrow account during the year, plus the amount necessary to maintain a one-sixth cushion. 12 U.S.C. 2609(a)(2).

101(53D). Section 1026.18(s) requires creditors to disclose the contract interest rate, regular periodic payment, and any balloon payment. For adjustable rate or step-rate amortizing mortgages, the creditor must disclose up to three interest rates and corresponding periodic payments. If payments are scheduled to increase independent of an interest-rate adjustment, the creditor must disclose the increased payment. If a borrower may make one or more payments of interest only, all payment amounts disclosed must be itemized to show the amount that will be applied to interest and the amount that will be applied to principal. Current § 1026.18(s) requires special interest rate and payment disclosures for loans that permit negative amortization. Also under current § 1026.18(s), creditors must separately itemize an estimate of the amount for taxes and insurance, including mortgage insurance, if the creditor will establish an escrow account for the payment of such amounts. The Board adopted this requirement pursuant to its authority under TILA section 105(a), based on consumer testing which indicated that consumers compare loans based on the monthly payment amount and that escrow payment information is necessary for consumers to understand the monthly amount they will pay. MDIA Interim Rule, 75 FR 58476-77 (Sept. 24, 2010). Current § 1026.18(s) also requires the disclosure of total periodic payments. Creditors must provide the information about interest rates and payments in the form of a table, and creditors are not permitted to include other, unrelated information in the table.

Current § 1026.18(s) expands the scope of TILA section 128(b)(2)(C) to all closed-end transactions secured by real property or a dwelling, other than transactions secured by the consumer’s interest in a timeshare plan, including transactions in which the interest rate and regular payments do not vary and those that are secured by real property that does not include a dwelling. The Board adjusted the scope of this provision pursuant to its authority under TILA section 105(a). The Board reasoned that providing examples of increased interest rates and payments will help consumers understand the risks involved in certain loans, and that consistent disclosure requirements for all mortgage-secured, closed-end consumer credit transactions, whether or not they include a dwelling, would ease compliance burden for mortgage creditors. MDIA Interim Rule, 75 FR 58470, 58473-74. The Board also stated that applying § 1026.18(s) to transactions where the interest rate or regular payments do not vary would simplify compliance for creditors and make it easier for consumers to compare different loan products. For all other closed-end credit transactions, § 1026.18(g) provides the rules for disclosing the payment schedule.

Pursuant to its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b), the Bureau proposed to incorporate the requirements of current § 1026.18(s) into new § 1026.37(c), for closed-end mortgages subject to proposed § 1026.19(e), with certain adjustments that are outlined below. As stated in the proposal, the Bureau believed that these requirements are necessary and proper to effectuate the purposes of TILA by promoting the informed use of credit. Accordingly, proposed § 1026.37(c) would have implemented the requirements of TILA sections 128(a)(6) and 128(b)(2)(C), and also would have implemented the requirements of new TILA sections 128(a)(16) and (b)(4), for closed-end mortgages subject to proposed § 1026.19(e). For all other closed-end transactions, § 1026.18(g) and (s) would have continued to apply.

Like existing § 1026.18(s), proposed § 1026.37(c) would have required creditors to disclose, in a separate table, an itemization of each separate periodic payment or range of payments required after consummation under the terms of the legal obligation. Proposed § 1026.37(c) also would have required disclosure of an estimate of taxes, insurance, and assessments and the payments to be made with escrow account funds. Specifically, the table required by proposed § 1026.37(c) would have contained the projected principal and interest, mortgage insurance, estimated escrowed taxes and insurance, estimated total monthly payment, and estimated taxes, insurance, and assessment disclosures, required by § 1026.37(c)(1) through (4). Pursuant to proposed § 1026.37(o) and form H-24, the table required by proposed § 1026.37(c) would have appeared on the first page of the Loan Estimate. The Bureau proposed that, as under § 1026.18(s), the table required by proposed § 1026.37(c) would have been disclosed in all transactions subject to proposed § 1026.19(e), even in transactions where the interest rate will not vary and those that are secured by real property that does not include a dwelling. Unlike current § 1026.18(s), the projected payments table required by proposed § 1026.37(c) would have applied to transactions secured by the consumer's interest in a timeshare plan but would not have applied to transactions secured by a dwelling that is not real property, for the reasons discussed in the section-by-section analysis of proposed § 1026.19.

The Bureau proposed to require the information disclosed pursuant to proposed § 1026.37(c) to appear under the heading "Projected Payments." As discussed above, TILA section 128(b)(2)(C)(i) requires the payment schedule to be labeled "Payment Schedule: Payments Will Vary Based on Interest Rate." The proposed rule stated that the Bureau believed that "Projected Payments" conveys the same substantive meaning, in plainer and simpler language, and is a more accurate heading for the table required by proposed § 1026.37(c) since payment amounts may vary for reasons other than interest rate, such as in graduated-payment plans or due to the termination of mortgage insurance under applicable law. The heading also performed well in consumer testing. Using the table under the heading "Projected Payments," participants in the Bureau's consumer testing were able to readily identify that their monthly payments might change in the future. Furthermore, the proposed rule stated that the Bureau believed that the Loan Terms table required by proposed § 1026.37(b) would effectively disclose when payments and interest rate will vary, and that consumers would not benefit from disclosure of that information in multiple places on the form. Accordingly, the Bureau believed that this proposed adjustment would promote the informed use of credit, improve consumer awareness and understanding of transactions involving residential mortgage loans, and is in the interest of consumers and the public, consistent with the purpose of TILA and with Dodd-Frank Act section 1405(b). In addition, the proposal noted that the Bureau believes that this disclosure would ensure that the features of consumer credit transactions secured by real property 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, consistent with section 1032(a) of the Dodd-Frank Act. Proposed comment 37(c)-1 would have provided that, for purposes of proposed § 1026.37(c), the terms "adjustable rate," "fixed rate," "negative amortization," and "interest only" have the meanings prescribed in § 1026.37(a)(10).

The Bureau understands from comments and informal feedback received prior to the proposal that consumer advocacy groups and some members of the financial services industry generally support requiring creditors to disclose the projected payments table, which would include the maximum possible payment under the terms of the legal obligation. In addition, the Bureau's qualitative consumer testing showed that consumers are able to use the projected payments table to identify how different elements of their periodic payments for principal and interest, taxes, and insurance can change over time. *See* Kleimann Testing Report at xxiv-v. Even if consumers could not fully understand why their payments changed, they understood that the payments would change and easily used the maximum possible payment amounts to judge their maximum payments over time. *Id*. at xxv. Consumers were also able to use the projected payments table to find elements of unpredictability in a loan and to compare the levels of predictability in the loans presented to them. *Id*. The Bureau's Quantitative Study similarly showed that consumers were better able to understand and answer questions about their total monthly payments, how the amount of monthly payment may change over time, and the various components of their monthly payments using the projected payments table than they were using the current disclosures. *See* Kleimann Quantitative Study Report at 55-56. Although the Bureau did not receive specific comment on the proposed introductory text to § 1026.37(c), including the heading "Projected Payments," or on proposed comment 37(c)-1, one large provider of mortgage origination software suggested the Bureau clarify that the projected payments table represents a payment schedule that is a material disclosure for purposes of § 1026.23. For the reasons discussed above and in the proposed rule, the Bureau is finalizing the introductory text to § 1026.37(c) and comment 37(c)-1 as proposed. The introductory text under § 1026.37(c) requires creditors to disclose in a separate table under the heading "Projected Payments," an itemization of each separate periodic payment or range of payments. This requirement pertains to such payments during the loan term, and thus, applies to future anticipated payments under the terms of the legal obligation, in addition to the initial periodic payment. For example, under § 1026.37(c)(1)(i)(A), one of the events requiring disclosure of an additional separate period payment or range of payments is if the periodic principal and interest payment or range of such payments may change. This would occur in an adjustable rate loan for which the promissory note provides for an interest rate change date after the date of consummation, which change is based on an external index, that requires monthly payments of principal and interest, and for which a new monthly payment is required beginning on the first monthly payment due date after the interest rate change date. The date the monthly payment may change is an event requiring disclosure, and the disclosure would reflect the monthly payments possible under the terms of the legal obligation, based on the minimum and maximum interest rates for such change. This range would be disclosed even though, in fact, the interest rate may not change on the interest rate change date, and thus, the monthly payment due after such change date would remain the same as the previous monthly payment.

The Bureau has considered the comment requesting clarification regarding whether the projected payments table is a material disclosure for purposes of § 1026.23. Although the Bureau is not adopting such a clarification in the rule, for consistency with the approach in current Regulation Z, the Bureau notes that the projected payments table required by §§ 1026.37(c) and 1026.38(c) is a "payment schedule" for purposes of § 1026.23, for the reasons discussed above in the section-by-section analysis of § 1026.18(s).

37(c)(1) Periodic Payment or Range of Payments

37(c)(1)(i)

Proposed § 1026.37(c)(1)(i) would have provided rules regarding the separate periodic payments or ranges of payments to be disclosed on the table required by § 1026.37(c). Specifically, proposed § 1026.37(c)(1)(i) would have provided that the initial periodic payment or range of payments is a separate periodic payment or range of payments and, except as otherwise provided in § 1026.37(c)(1)(ii), the following events would have required the disclosure of additional separate periodic payments or ranges of payments: (A) the periodic principal and interest payment or range of such payments may change; (B) a scheduled balloon payment; and (C) the creditor must automatically terminate mortgage insurance coverage, or any functional equivalent, under applicable law.

Proposed comments 37(c)(1)(i)-1, 37(c)(1)(i)(A)-1 through -3, 37(c)(1)(i)(B)-1, and 37(c)(1)(i)(C)-1 through -3 would have provided guidance to creditors on the events requiring the disclosure of a separate periodic payment or range of payments. Proposed comment 37(c)(1)(i)-1 would have clarified that, for purposes of § 1026.37(c)(1)(i), the periodic payment is the regularly scheduled payment of principal and interest, mortgage insurance, and escrow payments described in § 1026.37(c)(2) without regard to any final payment that differs from other payments because of rounding to account for payment amounts including fractions of cents. Proposed comment 37(c)(1)(i)(A)-1 would have provided that periodic principal and interest payments may change when the interest rate, applicable interest rate caps, required periodic principal and interest payments, or ranges of such payments may change. Minor payment variations resulting solely from the fact that months have different numbers of days would not have been classified as changes to periodic principal and interest payments. For a loan that permits negative amortization, proposed comment 37(c)(1)(i)(A)-2 would have clarified that periodic principal and interest payments may change at the time of a scheduled recast of the mortgage loan and when the consumer must begin making fully amortizing payments of principal and interest. The comment also would have provided that the disclosure of an event requiring disclosure of additional separate periodic payments or ranges of payments should be based on the assumption that the consumer will make only the minimum payment required under the terms of the legal obligation, for the maximum amount of time permitted, taking into account changes to interest rates that may occur under the terms of the legal obligation, and that the table required by § 1026.37(c) should reflect any balloon payment that would result from making the minimum payment required under the terms of the legal obligation. In a loan that permits payment of only interest for a specified period, proposed comment 37(c)(1)(i)(A)-3 would have clarified that periodic principal and interest payments may change for purposes of § 1026.37(c)(1)(i)(A) when the consumer must begin making fully amortizing periodic payments of principal and interest.

Proposed comment 37(c)(1)(i)(B)-1 would have stated that, for purposes of § 1026.37(c)(1)(i)(B), whether a balloon payment occurs is determined pursuant to § 1026.37(b)(5) and its commentary. Although the existence of a balloon payment would have been determined pursuant to § 1026.37(b)(5) and its commentary, balloon payment amounts to be disclosed under § 1026.37(c) would have been calculated in the same manner as periodic principal and interest payments under § 1026.37(c). For example, for a balloon payment amount that can change depending on previous interest rate adjustments that are based on the value of an index at the time of the adjustment, the balloon payment amounts would have been calculated using the assumptions for minimum and maximum interest rates described in proposed § 1026.37(c)(1)(iii) and its commentary, and should be disclosed as a range of payments.

Proposed comments 37(c)(1)(i)(C)-1 through -3 would have provided guidance to creditors regarding the disclosure of mortgage insurance. Proposed comment 37(c)(1)(i)(C)-1 would have stated that "mortgage insurance" means insurance against the nonpayment of, or default on, an individual mortgage, and that, for purposes of proposed § 1026.37(c), "mortgage insurance or any functional equivalent" would have included any mortgage guarantee that provides coverage similar to mortgage insurance (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee), even if not technically considered insurance under State or other applicable law. The Bureau stated in the proposal that it understands that some governmental loan programs impose an annual guarantee fee, and that creditors typically collect a monthly escrow for the payment of such amounts. Current

§ 1026.18(s) requires creditors to disclose whether mortgage insurance is included in monthly escrow payments, but industry uncertainty exists as to whether it is permissible to identify such guarantees as mortgage insurance on the disclosure required by § 1026.18(s). Although the proposed rule recognized that such guarantees are legally distinguishable from mortgage insurance, it also noted that they are functionally very similar. Accordingly, proposed comment 37(c)(1)(i)(C)-1 would have clarified that creditors should disclose any mortgage guarantee that provides coverage similar to mortgage insurance, even if not considered insurance under State or other applicable law, as mortgage insurance on the disclosure required by proposed § 1026.37(c). Proposed comment 37(c)(1)(i)(C)-1 would have been consistent with the treatment of mortgage guarantee fees under proposed comment 18(s)(3)(i)(C)-2.

Proposed comment 37(c)(1)(i)(C)-2 would have provided guidance to creditors on the calculation and termination of mortgage insurance premiums for purposes of determining the occurrence of an event requiring disclosure of additional separate periodic payments or ranges of payments by providing that, for purposes of proposed § 1026.37(c)(1)(i)(C), mortgage insurance premiums should be calculated based on the declining principal balance that will occur as a result of changes to the interest rate and payment amounts, assuming the fully-indexed rate at consummation, taking into account any introductory rates. Finally, proposed comment 37(c)(1)(i)(C)-3 would have clarified that the table required by proposed § 1026.37(c) reflected the consumer’s mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. Unlike termination of mortgage insurance, a subsequent decline in the consumer’s mortgage insurance premiums would not have been, by itself, an event that requires the disclosure of additional separate periodic payments or ranges of payments in the table required by § 1026.37(c). For example, some mortgage insurance programs annually adjust premiums based on the declining loan balance. Such annual adjustment to the amount of premiums would not have required a separate disclosure of a periodic payment or range of payments.

Industry commenters requested technical clarifications on this portion of the proposed rule. For example, one large creditor and several industry trade association commenters asked for clarification as to whether the disclosed payments should be based on the actual initial interest rate or the fully-indexed rate, and suggested that the appropriate approach is to require use of the actual interest rate. A law firm commenter representing a mortgage origination software provider requested clarification that an irregular first payment based on a short or long number of days until the first regular payment should be disregarded and should not be an event that requires the disclosure of additional separate periodic payments or ranges of payments. That commenter also requested clarification on the appropriate disclosure of monthly payment amounts in the case of construction and bridge loans where payment amounts tend to vary each month. One large provider of mortgage origination software noted that the varying number of columns in the projected payments table is the most significant programming challenge in the proposed rule and suggested that, due to this complexity, it would require at least one year to implement.

A large consumer advocacy group commenter suggested changes to the rule on calculation of the maximum payment in loans with negative amortization features. As noted above, the proposed rule included guidance for calculating the maximum payment in two separate places. For loans that permit negative amortization, proposed comment 37(c)(1)(i)(A)-2, which would have provided guidance on negative amortization loans for purposes of determining the occurrence of an event requiring disclosure of additional separate periodic payments or range of payments, would have provided that the disclosure should be based on the assumption that the consumer will make only the minimum payment required under the legal obligation. Proposed § 1026.37(c)(1)(iii) and comment 37(c)(1)(iii)-1, however, would have provided that, for adjustable rate loans, the maximum disclosed payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible rate and that the creditor assumes the interest rate will rise as rapidly as possible after consummation. Proposed § 1026.37(c)(1)(iii) did not contain specific guidance on loans with negative amortization features. The commenter stated that if a creditor were to apply both provisions to an adjustable rate loan with a negative amortization feature, it would produce a payment that is less than the maximum possible payment.

Several industry commenters also requested clarifications regarding the termination of mortgage insurance, or any functional equivalent, under § 1026.37(c)(1)(i)(C). For example, one large provider of mortgage origination software requested clarification as to whether "mortgage insurance or any functional equivalent" for purposes of § 1026.37(c) requires disclosure of upfront or financed mortgage insurance premiums, such as the funding fee on loans guaranteed by the U.S. Department of Veterans Affairs. Similarly, a large consumer advocacy group commenter argued that creditor-paid mortgage insurance should also be disclosed on the table required by proposed § 1026.37(c) because those amounts are generally paid in the form of higher origination fees or a higher interest rate. Several industry trade association commenters and a large national lender also requested clarification regarding the calculation of the date that mortgage insurance, or any functional equivalent, would terminate for purposes of § 1026.37(c)(1)(i)(C). In particular, for an adjustable rate loan with a premium or discounted initial rate, those commenters stated that it is not clear whether mortgage insurance premiums would be calculated based on the actual interest rate or would be based on an assumption that the initial rate is equal to the fully-indexed rate. Several industry trade association commenters also noted that it is not clear what was meant by proposed comment 37(c)(1)(i)(C)-2, which would have provided that the termination of mortgage insurance should be calculated based on the declining principal balance that would occur as a result of changes to the interest rate and payment amounts, assuming the fully-indexed rate applies at consummation, taking into account any introductory rates. A small bank commenter also argued that the rule should expressly state that the calculation of mortgage insurance may be based on the estimated value of the property provided by the consumer and loan amount, since appraised values may differ significantly from estimates.

For the reasons discussed in the proposed rule and below, the Bureau is adopting § 1026.37(c)(1)(i) and its commentary as proposed, with the following revisions and clarifications.

First, the final rule contains an additional cross-reference to the exceptions from the general rule that the events described in § 1026.37(c)(1)(i)(A) through (D) require disclosure of additional separate periodic payments or ranges of payments. As noted above, proposed § 1026.37(c)(1)(i) would have provided that the initial periodic payment or range of payments is a separate periodic payment or range of payments and would have specified events that require disclosure of additional separate periodic payments or ranges of payments, subject to certain exceptions in proposed § 1026.37(c)(1)(ii). However, as adopted and discussed below in the section-by-section analysis of § 1026.37(c)(1)(iii), § 1026.37(c)(1)(iii) also contains exceptions to the general rule in § 1026.37(c)(1)(i) regarding the disclosure of additional separate periodic payments or ranges of payments in cases where multiple events described in § 1026.37(c)(1)(i) are combined and disclosed as a range of payments. For this reason, § 1026.37(c)(1)(i), as adopted, contains an additional cross-reference to the exceptions in § 1026.37(c)(1)(iii). Specifically, § 1026.37(c)(1)(i) provides that the initial periodic payment or range of payments is a separate periodic payment or range of payments, and specifies certain events that require disclosure of additional separate periodic payments or ranges of payments, subject to exceptions in § 1026.37(c)(1)(ii) and (iii).

Second, the Bureau is adding comment 37(c)(1)(i)-2, which clarifies the rule regarding the disclosure of the initial periodic payment or range of payments, in response to commenter requests for clarification as to whether the disclosure should be based on the actual initial interest rate or the fully-indexed rate, as described above. As adopted, comment 37(c)(1)(i)-2 clarifies that § 1026.37(c)(1)(i) requires the creditor to disclose the initial periodic payment or range of payments, which is the actual periodic payment or range of payments that corresponds to the interest rate that will apply at consummation, including any initial discounted or premium interest rate. The comment cross-references comment 17(c)(1)-10.v for examples of discounted and premium rate transactions and comments 17(c)(1)-3 through 5 for guidance regarding whether the disclosure should reflect a buydown. The comment also clarifies that, if the initial periodic payment or range of payments may vary based on an adjustment to an index value that applies at consummation, § 1026.37(c)(1)(i) requires that the disclosure of the initial periodic payment or range of payments be based on the fully-indexed rate disclosed under § 1026.37(b)(2). The comment cross-references comment 37(b)(2)-1 for guidance regarding calculating the fully-indexed rate.

Third, the Bureau is making adjustments to comment 37(c)(1)(i)(A)-2, which clarifies the rule regarding the events requiring disclosure of additional separate periodic payments or ranges of payments due to a change to the periodic principal and interest payment in loans that contain negative amortization features. The Bureau is revising comment 37(c)(1)(i)(A)-2 to explain that, in a loan that contains a negative amortization feature, periodic principal and interest payments or the range of such payments may change for purposes of § 1026.37(c)(1)(i)(A) at the time the negative amortization period ends under the terms of the legal obligation, meaning the consumer must begin making payments that do not result in an increase of the principal balance. As noted above, a large consumer advocacy group commenter stated that the proposed guidance could result in a disclosure of a separate periodic payment or range of payments at a time when the payment has not reached the maximum payment under the terms of the legal obligation. To address this concern, the comment clarifies that the occurrence of an event requiring disclosure of additional separate periodic payments or ranges of payments should be based on the assumption that the consumer will make payments as scheduled or, if applicable, elect to make the periodic payments that would extend the negative amortization period to the latest time permitted under the terms of the legal obligation. The comment further clarifies that the occurrence of all subsequent events requiring disclosure of additional separate periodic payments or ranges of payments should be based on this assumption, and that the table required by § 1026.37(c) should also reflect any balloon payment that would result from such scheduled payments or election. The comment references § 1026.37(c)(1)(ii)(A) for special rules regarding disclosure of balloon payments.

The Bureau believes that the guidance provided in the final rule regarding events requiring disclosure of additional separate periodic payments or ranges of payments in loans that contain a negative amortization feature provides additional clarity for creditors while providing meaningful disclosure to consumers of the risks of payment shock associated with loans that contain negative amortization features. The guidance in revised comment 37(c)(1)(i)(A)-2, however, pertains only to the occurrence of an event requiring disclosure of additional separate periodic payments or ranges of payments in a loan with a negative amortization feature. Separate rules regarding the disclosure of the amount payable for principal and interest are found in § 1026.37(c)(2)(i) and its commentary, which includes a special rule for the disclosure of principal and interest for adjustable rate loans that contain negative amortization features in § 1026.37(c)(2)(i)(B). For a discussion of this provision, see the section-by-section analysis of § 1026.37(c)(2)(i), below.

The Bureau is also adopting clarifying adjustments to comment 37(c)(1)(i)(A)-3, which provides guidance regarding events requiring disclosure of additional separate periodic payments or ranges of payments in loans with interest only features. That comment provides that, in a loan that contains an interest only feature, periodic principal and interest payments may change for purposes of § 1026.37(c)(1)(i)(A) when the interest only period ends, meaning the consumer must begin making payments that do not defer repayment of principal. As proposed, comment 37(c)(1)(i)(A)-3 provided that periodic principal and interest payments may change when the consumer must begin making fully amortizing periodic payments of principal and interest. However, the proposed comment would not have accounted for the possibility that a loan may require the consumer to begin making payments that do not defer repayment of principal, but that those payments may not be fully amortizing. Although the Bureau understands that such transactions may not be common, the Bureau, through public comments and stakeholder outreach prior to the proposal, received feedback regarding the extensive variability of credit and real estate transactions, and thus has revised the comment to account for such possibility. The

Bureau believes that such periodic payment adjustments should be reflected as separate periodic payments or ranges of payments on the projected payments table in order to provide a more meaningful and accurate disclosure to consumers, and has revised comment 37(c)(1)(i)(A)-3 accordingly.

The Bureau is not providing specific guidance in § 1026.37(c) regarding whether the periodic principal and interest disclosure should be based on an average 30-day month or some other measure. Under current § 1026.17(c)(3)-1.iii, creditors may base their disclosures on calculation tools that assume that all months have an equal number of days, even if their practice is to take account of the variations in months for purposes of collecting interest. Because this guidance applies generally to the disclosures required by § 1026.37, the Bureau does not believe it is necessary or appropriate to provide such guidance in § 1026.37(c).

In addition to the changes to § 1026.37(c)(1)(i)(A), the Bureau is adding a reference to the definition of balloon payment in § 1026.37(b)(5) to § 1026.37(c)(1)(i)(B) to clarify that, for purposes of determining the occurrence of an event requiring the disclosure of additional separate periodic payments or ranges of payments, "balloon payment" is defined pursuant to § 1026.37(b)(5). The Bureau is also revising comment 37(c)(1)(i)(B)-1 to clarify that separate rules apply to determining the existence of a balloon payment for purposes § 1026.37(c)(1)(i) (events requiring disclosure of additional separate periodic payments) and to determining the amount of a balloon payment to disclose under § 1026.37(c)(2)(i). To clarify the distinction between the two provisions, the Bureau is moving guidance regarding the amount of a balloon payment to disclose for purposes of § 1026.37(c)(2)(i) to comment 37(c)(2)(i)-3 and placing a cross reference to that comment in comment 37(c)(1)(i)(B)-1.

The Bureau is making clarifying changes to comment 37(c)(1)(i)(C)-1, which generally defines mortgage insurance for purposes of § 1026.37(c). As proposed, that comment would have provided that "mortgage insurance" means insurance against the nonpayment of, or default on, and individual mortgage. As finalized, however, the comment provides that "mortgage insurance or any functional equivalent" means the amounts identified in § 1026.4(b)(5). The Bureau believes that referencing the component of the finance charge in § 1026.4, rather than adopting a new definition, will facilitate compliance for creditors and avoid regulatory complexity, since the definition in § 1026.4(b)(5) is a longstanding part of Regulation Z. This change is consistent with the definition of "mortgage-related obligations" in the Bureau's 2013 ATR Final Rule, with § 1026.37(c)(4)(ii), regarding the disclosure of estimated taxes, insurance, and assessments, described below, and with the definition of mortgage insurance or any functional equivalent in § 1026.18(s), described above. Consistent with the proposal, comment 37(c)(1)(i)(C)-1 also clarifies that, for purposes of § 1026.37(c), "mortgage insurance or any functional equivalent" includes any mortgage guarantee that provides coverage similar to mortgage insurance (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee), even if not technically considered insurance under State or other applicable law.

In addition, the Bureau is making clarifying adjustments to the headings of comments 37(c)(1)(i)(C)-2 and -3, which provide guidance regarding the calculation and disclosure of the date that mortgage insurance terminates for purposes of § 1026.37(c)(1)(i), to clarify that the guidance in those comments applies only to the date that mortgage insurance terminates for purposes of § 1026.37(c)(1)(i), and not to the amount of mortgage insurance to disclose in the table required by § 1026.37(c). For this same reason, the Bureau is revising comment 37(c)(1)(i)(C)-2 to contain a cross-reference to § 1026.37(c)(2)(ii) and its commentary. The

Bureau is also revising comment 37(c)(1)(i)(C)-2 to address commenter requests for clarification, described above, as to whether mortgage insurance termination would be calculated based on the actual interest rate or the fully-indexed rate.

As adopted, comment 37(c)(1)(i)(B)-2 provides that, for purposes of § 1026.37(c)(1)(i)(C), mortgage insurance premiums should be calculated based on the declining principal balance that will occur as a result of changes to the interest rate and payment amounts, applying the interest rates applicable to the transaction. Such calculation should take into account any initial discounted or premium interest rate. The comment provides an example of an adjustable rate transaction that has an initial discounted interest rate during an initial five-year period. In such a transaction, the creditor makes the calculation using a composite rate based on the rate in effect during the initial five-year period and thereafter, the fully-indexed rate, unless otherwise required by applicable law. The comment cross references § 1026.37(c)(2)(ii) and its commentary for guidance on calculation of the amount of mortgage insurance premiums to disclose on the table required by § 1026.37(c) and cross-references comment 37(b)(2)-1 for guidance on calculation of the fully-indexed rate.

The Bureau has also considered other comments related to the disclosure of the termination of mortgage insurance, but does not believe the comments should be specifically addressed in the rule. With respect to the request for clarification as to whether the table requires disclosure of upfront mortgage insurance premiums, the Bureau notes that § 1026.37(c) requires only disclosure of the "periodic" payment or range of payments. Upfront mortgage insurance premiums are not paid on a periodic basis, and so are not required to be disclosed on the table required by § 1026.37(c). Furthermore, § 1026.37(c)(2)(iii) specifies that the creditor discloses the maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment disclosed. Because upfront mortgage insurance premiums are not paid on a periodic basis, they would not be disclosed on the table required by § 1026.37(c). For these same reasons, creditor-paid mortgage insurance would not be disclosed on the table required by § 1026.37(c). In addition, to the extent that creditor-paid mortgage insurance premiums are paid by the consumer in the form of a higher interest rate, those charges are disclosed on the table required by § 1026.37(c) through the consumer's projected payments for principal and interest as well as in the interest rate disclosure required by § 1026.37(b)(2). To the extent that creditor-paid mortgage insurance premiums are paid by the consumer in the form of higher origination fees, those amounts would be disclosed as origination charges under § 1026.37(f)(1). The purpose of the projected payments table is to illustrate how consumers' periodic payments will change over time and the Bureau believes that attempting to disclose creditor-paid mortgage insurance premiums, which are not paid by the consumer on a periodic basis, on the projected payments table could result in consumer confusion.

Finally, the Bureau is adopting a new § 1026.37(c)(1)(i)(D), which describes an event that requires disclosure of additional separate periodic payments or ranges of payments that was not specifically listed in the proposed rule. As adopted, § 1026.37(c)(1)(i)(D) provides that the anniversary of the due date of the initial periodic payment or range of payments that immediately follows the occurrence of multiple events described in § 1026.37(c)(1)(i)(A) during a single year is an event that requires the disclosure of additional separate periodic payments or ranges payments. This provision clarifies the rule regarding the appropriate disclosure of separate periodic payments or ranges of payments in the table required by § 1026.37(c), and is not intended to be a substantive change from the proposed rule. As noted below, § 1026.37(c)(1)(iii)(B), as adopted, contains a special rule regarding the disclosure of periodic principal and interest payments when multiple periodic principal and interest payments would apply during a single year. That section requires creditors to disclose the range of payments that would apply during the year in which such events occur. To highlight for consumers the periodic principal and interest payment that would apply after the year during which multiple periodic principal and interest payments changes occur, § 1026.37(c)(1)(i)(D) requires creditors to disclose the periodic payment or range of payments that would apply as of the anniversary following such combined range of payments as a separate periodic payment or range of payments. The Bureau believes this requirement assures that consumers are provided with a disclosure that clearly and accurately reflects future changes to periodic payments and clarifies the rule for creditors, facilitating compliance for industry. For further clarity, the Bureau is also adopting comment 37(c)(1)(i)(D)-1, which provides a cross-reference to comment 37(c)(1)(iii)(B)-1 for an example of the application of § 1026.37(c)(1)(i)(D).

37(c)(1)(ii)

Proposed § 1026.37(c)(1)(ii) would have contained special rules for the disclosure of separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i). Specifically, proposed § 1026.37(c)(1)(ii) would have provided that the table required by § 1026.37(c) shall not disclose more than four separate periodic payments or ranges of payments. For all events requiring disclosure of additional separate periodic payments or ranges of payments described in proposed § 1026.37(c)(1)(i) after the second to occur, the separate periodic payments or ranges of payments would have been disclosed as a single range of payments, subject to the special rules listed in proposed § 1026.37(c)(1)(ii)(A) through (C).

Proposed § 1026.37(c)(1)(ii)(A) would have contained a special rule for final balloon payments. That section would have required that a final balloon payment shall always be disclosed as a separate periodic payment or range of payments and that, if a final balloon payment is disclosed, no more than three other separate periodic payments or ranges of payments are disclosed. Proposed comment 37(c)(1)(ii)(A)-1 would have clarified that § 1026.37(c)(1)(ii)(A) would have been an exception to the general rule in proposed § 1026.37(c)(1)(ii), and would have required that a balloon payment that is scheduled as a final payment under the terms of the legal obligation is always disclosed as a separate periodic payment or range of payments. Balloon payments that are not final payments, such as a balloon payment due at the scheduled recast of a loan that permits negative amortization, would have been disclosed pursuant to the general rule in proposed § 1026.37(c)(1)(ii). Proposed § 1026.37(c)(1)(ii)(B) would have provided a special rule for disclosure of mortgage insurance premiums, requiring that the automatic termination of mortgage insurance, or any functional equivalent, under applicable law shall be disclosed as a separate periodic payment or range of payments only if the total number of events that require disclosure of additional separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i), other than the termination of mortgage insurance or any functional equivalent, does not exceed two.

Finally, proposed § 1026.37(c)(1)(ii)(C) would have provided a special rule for events that require disclosure of additional separate periodic payments or ranges of payments that occur during the same year. Under proposed § 1026.37(c)(1)(ii)(C), if changes to periodic principal and interest payments described in proposed § 1026.37(c)(1)(i)(A) would have required more than one separate disclosure during a single year, such periodic payments would have been disclosed as a single range of payments.

One large bank commenter stated that the rule should require that all known or scheduled periodic payment changes be disclosed to the consumer, rather than limiting to four the number of separate periodic payments or ranges of payments. That commenter argued that disclosing all payment changes would benefit consumers and would decrease creditors' risk of liability under certain State laws. Several industry commenters requested clarifications regarding the special rules related to events that require disclosure of additional separate periodic payments under the proposed rule. These commenters generally requested further guidance on how to determine the number of columns that would appear on the disclosure required by § 1026.37(c) under certain specific conditions. For example, one industry trade association commenter requested clarification regarding proposed § 1026.37(c)(ii)(C), which would have required creditors to disclose as one range of payments multiple events that occur during a single year, and two industry trade association commenters requested clarification on the disclosure rules in transactions where the balloon payment is the final payment under the terms of the legal obligation.

For the reasons discussed in the proposed rule and below, the Bureau is adopting § 1026.37(c)(1)(ii) and its commentary substantially as proposed, with the following revisions and clarifications. First, as adopted, § 1026.37(c)(1)(ii) provides that the table required by § 1026.37(c) shall not disclose more than four separate periodic payments or ranges of payments and that, for all events requiring disclosure of additional separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i)(A) through (D) occurring after the third separate periodic payment or range of payments disclosed, the separate periodic payments or ranges of payments shall be disclosed as a single range of payments, subject to certain exceptions. The purpose of this provision is to limit to four the number of columns, which each reflect a separate periodic payments or range of payments, that appear on the table required by § 1026.37(c) and to establish rules for how creditors disclose the periodic payments or ranges of payments if the total number of columns would otherwise exceed four. Whereas proposed § 1026.37(c)(1)(ii) would have referred to all events requiring disclosure of additional separate periodic payments or ranges of payments "after the second to occur" when describing how a creditor discloses the periodic payments or ranges of payments if the total number of columns would otherwise exceed four, the final rule refers to the actual disclosed periodic payments or ranges of payments. The Bureau is making this change from the proposed rule in response to commenter requests for clarification, described above. The Bureau believes that § 1026.37(c)(1)(ii), as adopted, provides clearer guidance for creditors regarding the disclosure of periodic payments or ranges of payments in transactions where the total number of columns that appear on the table required by § 1026.37(c) would otherwise exceed four.

Second, the final rule makes certain clarifying changes to § 1027.37(c)(1)(ii)(A). As adopted, § 1026.37(c)(1)(ii)(A) provides an exception to the general rule in § 1026.37(c)(1)(ii) for transactions with a "balloon payment scheduled as a final payment." Whereas proposed § 1026.37(c)(1)(ii)(A) would have referred to a "final balloon payment," the final rule refers to a "balloon payment that is a final payment under the terms of the legal obligation." The Bureau believes this formulation more clearly conveys that the provision relates to balloon payments that are the last scheduled payment under the terms of the legal obligation, rather than the last balloon payment to occur in a series of balloon payments. In addition, § 1026.37(c)(1)(ii)(A), as adopted, contains instructions on how to disclose events that require disclosure of additional separate periodic payments or ranges of payments in transactions with balloon payments scheduled as the final payment and where the rule would otherwise require disclosure of more than four columns on the table required by § 1026.37(c). In particular, the final rule provides that, in such a case, all events requiring disclosure of additional separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i)(A) through (D) occurring after the second separate periodic payment or range of payments disclosed, other than the final balloon payment, shall be disclosed as a single range of payments. The Bureau is adding this language to § 1026.37(c)(1)(ii)(A) in response to commenter requests for clarification regarding the number of columns that would appear on the disclosure required by § 1026.37(c) in transactions where the balloon payment is scheduled as the final payment, which are described above. The Bureau believes that § 1026.37(c)(1)(ii)(A), as adopted, provides additional clarity to creditors regarding disclosure of periodic payments in transactions with balloon payments scheduled as the final payment under the terms of the legal obligation. Comment 37(c)(1)(ii)(A)-1, as adopted, also explains that a balloon payment that is a final payment is disclosed as a single payment and is not combined with other changes to periodic principal and interest payments and disclosed as a range. For further clarity, the Bureau is adopting comment 37(c)(1)(ii)(A)-2, which provides an example of the application of the special rule in § 1026.37(c)(1)(ii)(A). The example provided in comment 37(c)(1)(ii)(A)-2 clarifies that, although the balloon payment that is scheduled as the final payment under the terms of the legal obligation occurs after the third separate periodic payment or range of payments, the creditor discloses the final balloon payment as a separate event requiring disclosure of additional periodic payments or range of payments in the fourth column, and discloses the payment or range of payments that would apply after the second and third interest rate adjustments as a single range of payments in the third column. In contrast, if the final rule did not contain the special rule in § 1026.37(c)(1)(ii)(A), the creditor would have been required to disclose in the first column the initial periodic payment or range of payments, in the second column the periodic payment or range of payments that would apply after the first interest rate adjustment, in the third column the periodic payment or range of payments that would apply after the second interest rate adjustment, and in the fourth column the periodic payment or range of payments that would apply after the third and final interest rate adjustment through the final balloon payment as a single range of payments. The Bureau believes that the information regarding the final balloon payment will be more useful to consumers when disclosed as a separate payment, because it will make the fact that a final balloon payment exists and the amount of the final balloon payment more easily visible by consumers, and thus, is adopting the special rule under § 1027.37(c)(1)(ii)(A) substantially as proposed, with the clarifying changes described above.

Third, as adopted, § 1026.37(c)(1)(ii)(B) provides that the automatic termination of mortgage insurance or any functional equivalent under applicable law shall require disclosure of an additional separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant § 1026.37(c)(1) does not exceed three. The purpose of this provision is to provide an exception to the general rule in § 1026.37(c)(1)(ii) regarding the disclosure of a range of payments for each event occurring after the third separate periodic payment or range of payments disclosed. Whereas proposed § 1026.37(c)(1)(ii)(B) would have referred to the number of "events requiring disclosure of additional separate periodic payments" in describing how to disclose mortgage insurance in transactions that would otherwise require more than four columns in the table required by § 1026.37(c), the final rule refers to the actual disclosure of additional separate periodic payments or ranges of payments. The Bureau believes that § 1026.37(c)(1)(ii)(B), as adopted, provides clearer guidance for creditors regarding disclosure of periodic payments or ranges of payments in transactions where mortgage insurance is required to be disclosed and where the total number of columns in the table required by § 1026.37(c) would otherwise exceed four.

In response to commenter requests for additional clarification regarding the disclosure of mortgage insurance termination, the Bureau is also finalizing a new comment 37(c)(1)(ii)(B)-1, which did not appear in the proposed rule. As adopted, that comment explains that § 1026.37(c)(1)(ii)(B) is an exception to the general rule in § 1026.37(c)(1)(ii), and requires that the automatic termination of mortgage insurance under applicable law is disclosed as a separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed does not exceed three. The comment further clarifies that where the automatic termination of mortgage insurance under applicable law is not disclosed as a separate periodic payment or range of payments, the absence of a required mortgage insurance payment is disclosed with the next disclosed event requiring disclosure of additional separate periodic payments or ranges of payments, as applicable. For further clarification, the Bureau is also adopting new comment 37(c)(1)(ii)(B)-2, which provides two examples of the application of the special rule regarding the disclosure of the automatic termination of mortgage insurance.

The Bureau is not adopting § 1026.37(c)(1)(ii)(C). As proposed, § 1026.37(c)(1)(ii)(C) would have provided, as an exception to the general rule in § 1026.37(c)(1)(ii), that if changes to periodic principal and interest payments would require more than one separate disclosure of additional separate periodic payments or ranges of payments during a single year, such periodic payments shall be disclosed as a single range of payments. The Bureau believes that the language in proposed § 1026.37(c)(1)(ii)(C) would provide clearer guidance to creditors if located in § 1026.37(c)(1)(iii), which generally provides rules regarding the disclosure of a range of payments in the table required by § 1026.37(c). See the section-by-section analysis of § 1026.37(c)(1)(iii), below, for additional discussion of proposed § 1026.37(c)(1)(ii)(C).

Finally, the Bureau has considered the comment requesting that all scheduled periodic payment changes be disclosed to the consumer, rather than limiting the amount to four, but declines to adopt such a requirement. The Bureau's consumer testing indicates that consumers are generally able to evaluate the payment changes that will occur over the life of the loan using the projected payments table that is limited to four columns. Kleimann Quantitative Study Report at 55-56. Moreover, the Bureau believes that a requirement to disclose all future periodic payment changes would result in information overload to consumers.

37(c)(1)(iii)

Proposed § 1026.37(c)(1)(iii) would have provided rules for the disclosure of ranges of payments. Under the proposed rule, a range of payments would have been disclosed when the periodic principal and interest payment may adjust based on index rates at the time an interest rate adjustment may occur or multiple events are combined in a range of payments pursuant to proposed § 1026.37(c)(1)(ii). When a range of payments is required, the creditor would have been required to disclose the minimum and maximum possible payment amount for both the principal and interest payment under proposed § 1026.37(c)(2)(i) and the total periodic payment under proposed § 1026.37(c)(2)(iv). In the case of an interest rate adjustment, the maximum payment amounts would have been determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest, and the minimum payment amounts would have been determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate.

Proposed comment 37(c)(1)(iii)-1 would have clarified that a range of payments must be disclosed when the periodic principal and interest payments are not known at the time the disclosure is provided because they are subject to changes based on index rates at the time of an interest rate adjustment or when multiple events are disclosed as a range of payments pursuant to proposed § 1026.37(c)(1)(ii). For such transactions, proposed § 1026.37(c)(3)(iii) would have required the creditor to disclose both the minimum and maximum periodic principal and interest payments, expressed as a range. In disclosing the maximum possible interest rate for purposes of § 1026.37(c), the creditor would have assumed that the interest rate will rise as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. For a loan with no lifetime interest rate cap, the maximum rate would have been determined by reference to other applicable laws, such as State usury law. In disclosing the minimum possible interest rate for purposes of § 1026.37(c), the creditor would have assumed that the interest rate will decrease as rapidly as possible after consummation, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an adjustable rate mortgage based on an index that has no lifetime interest rate floor, the minimum interest rate would have been equal to the margin. Proposed comment 37(c)(1)(iii)-2 would have clarified that, when a range of payments is required, the amount required to be disclosed for mortgage insurance premiums pursuant to proposed § 1026.37(c)(2)(ii) and the amount payable into escrow pursuant to proposed § 1026.37(c)(2)(iii) shall not be disclosed as a range. Proposed comment 37(c)(1)(iii)-3 would have provided guidance to creditors on the disclosure of ranges of payments in adjustable rate mortgages.

As noted above, several industry trade association commenters requested that the final rule provide further clarification and guidance on the disclosure of periodic payments or ranges of payments when multiple events requiring disclosure of additional separate periodic payments or ranges of payments occur during the same year. The Bureau has considered these comments and, for the reasons discussed in the proposed rule and below, is adopting § 1026.37(c)(1)(iii) and its commentary substantially as proposed, with the following revisions and clarifications.

First, the Bureau has restructured the introductory language to § 1026.37(c)(1)(iii) to first provide the general rule that when a range of payments is required to be disclosed under § 1026.37(c)(1), the creditor must disclose the minimum and maximum amount for both the principal and interest payment under § 1026.37(c)(2)(i) and the total periodic payment under § 1026.37(c)(2)(iv). The rule then provides a list of when a range of payments is required to be disclosed under § 1026.37(c)(1). The introductory language to § 1026.37(c)(1)(iii), as adopted, does not contain substantive changes from the proposed rule, but is revised for clarity.

Second, the final rule adds § 1026.37(c)(1)(iii)(A). As adopted, that section provides that a range of payments is required to be disclosed when multiple events described in § 1026.37(c)(1)(i) are combined in a single range of payments pursuant to § 1026.37(c)(1)(ii), as described above. This language is adopted from proposed § 1026.37(c)(1)(iii) and does not contain substantive changes from the proposed rule.

Third, the final rule adds § 1026.37(c)(1)(iii)(B). As adopted, that section provides that a range of payments is required to be disclosed when multiple events described in § 1026.37(c)(1)(i)(A) occur during a single year or an event described in § 1026.37(c)(1)(i)(A) occurs during the same year as the initial periodic payment or range of payments, in which case the creditor discloses the range of payments that would apply during the year in which the events occur. This provision is adopted from proposed § 1026.37(c)(1)(ii)(C), which would have provided that if changes to periodic principal and interest payments described in § 1026.37(c)(1)(i)(A) would require more than one separate disclosure during a single year, such periodic payments shall be disclosed as a single range of payments. As discussed above, the

Bureau believes that the rule that would have appeared in proposed § 1026.37(c)(1)(ii)(C) would provide clearer guidance to creditors if placed in § 1026.37(c)(1)(iii), which generally provides rules regarding the disclosure of a range of payments in the table required by § 1026.37(c). The final rule also contains additional language in § 1026.37(c)(1)(iii)(B) to clarify that changes to periodic principal and interest payments that occur during the first year of the loan are also combined and disclosed as a range of payments that would apply during the year in which the events occur. The Bureau is making these changes to the proposed rule in response to commenter requests for clarification regarding the disclosure of separate periodic payments or ranges of payments that occur during the same year.

For additional clarity, the Bureau is also adopting comment 37(c)(1)(iii)(B)-1 to provide guidance to creditors regarding the disclosure of separate periodic payments or ranges of payments when multiple events occur during a single year. That comment clarifies that if changes to periodic principal and interest payments would result in more than one separate periodic payment or range of payments in a single year, § 1026.37(c)(1)(iii)(B) requires the creditor to disclose the range of payments that would apply during the year in which the events occur. The comment also provides an example that assumes a loan with a 30-year term with a payment that adjusts every month for the first 12 months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). Under this example, the creditor discloses as a range of payments the initial periodic payment and the periodic payment that would apply after each payment adjustment during the first 12 months and would also disclose, as an additional separate range of payments, the periodic principal and interest payment or range of payments that would apply after the payment becomes fixed. The comment provides a second example that assumes instead a loan with a 30-year term with an interest rate that provides for a payment adjustment after three months and after six months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). Under this example, the creditor discloses as a range of payments the initial periodic payment and the periodic payment that would apply after the payment adjustment that occurs after six months, which represent the minimum payment and maximum payment, respectively, which would apply during the first year of the loan. Pursuant to § 1026.37(c)(1)(i)(D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply after the payment adjustment that would apply on the anniversary of the initial periodic payment, which is the periodic payment that occurs after the six month payment adjustment.

In addition, the final rule adds § 1026.37(c)(1)(iii)(C). As adopted, that section provides that a range of payments is required to be disclosed when the periodic principal and interest payment may adjust based on index rates at the time an interest rate adjustment may occur. This language is adopted from proposed § 1026.37(c)(1)(iii) and does not contain substantive changes from the proposed rule.

The Bureau is not adopting proposed comment 37(c)(1)(iii)-1, which would have provided guidance to creditors regarding the disclosure of the minimum and maximum principal and interest payments in transactions where principal and interest payments are not known at the time the disclosure is provided because they are subject to changes based on index rates at the time of an interest rate adjustment. For clarity, the Bureau is providing this guidance in commentary to § 1026.37(c)(2), which is discussed below.

37(c)(2) Itemization

Proposed § 1026.37(c)(2) would have required that each separate periodic payment or range of payments included in the table required by proposed § 1026.37(c) must be itemized to include the following: (1) the amount payable for principal and interest, labeled as "Principal & Interest," including the term "only interest" if the payment or range of payments includes any interest only payment; (2) the maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment disclosed pursuant to proposed § 1026.37(c)(2)(i), labeled "Mortgage Insurance"; (3) the amount payable into an escrow account to pay for some or all of the charges described in proposed § 1026.37(c)(4)(ii)(A) through (E), labeled "Estimated Escrow," including a statement that the amount disclosed can increase over time; and (4) the total periodic payment, calculated as the sum of the amounts disclosed pursuant to proposed § 1026.37(c)(2)(i) through (iii), labeled "Total Monthly Payment." As discussed in the Kleimann Testing Report, the Bureau's consumer testing indicated that consumers understand the table and can identify the components of their total monthly payment using this itemization of payments. *See* Kleimann Testing Report at 283.

Proposed comment 37(c)(2)(ii)-1 would have clarified that mortgage insurance payments should be reflected on the disclosure required by proposed § 1026.37(c) even if no escrow account is established for the payment of mortgage insurance premiums. If the consumer is not required to purchase mortgage insurance, the creditor would have disclosed the mortgage insurance premium as "0." Proposed comment 37(c)(2)(ii)-2 would have clarified that the creditor must disclose mortgage insurance payments pursuant to proposed § 1026.37(c)(2)(ii) on the same periodic basis that payments for principal and interest would have been disclosed pursuant to proposed § 1026.37(c)(2)(i), even if mortgage insurance premiums are actually paid on some other periodic basis.

The Bureau proposed to implement TILA sections 128(a)(16) and 128(b)(4)(A) pursuant to its implementation authority under TILA section 105(a) and require creditors to disclose the amount of estimated escrow payments, as well as pursuant to its authority under Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). As discussed above, TILA section 128(a)(16) requires that, for variable-rate residential mortgage loans for which an escrow account will be established, the creditor must disclose the initial total monthly payment, including escrow payments for taxes and insurance. The Bureau proposed to modify this requirement to cover all transactions subject to proposed § 1026.19(e) for which an escrow account will be established, including fixed rate loans. Additionally, TILA section 128(b)(4)(A) requires that, for any consumer credit transaction secured by a first lien on the principal dwelling of the consumer for which an escrow account will be established, the creditor must take into account escrow payments when making the disclosures required by TILA section 128(a)(6). The Bureau also proposed to modify the scope of this requirement to cover all transactions subject to proposed § 1026.19(e) for which an escrow account will be established. The Bureau proposed these modifications pursuant to its authority to implement TILA sections 128(a)(16) and 128(b)(4)(A) under TILA section 105(a), as well as its authority under Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The proposal stated that these modifications are consistent with the purposes of TILA, as they may promote the informed use of credit by allowing consumers to more readily compare loans. Further, the proposal stated that applying a single disclosure rule to all transactions subject to proposed § 1026.19(e) may ease compliance burden for creditors. Accordingly, the proposal stated that these modifications will improve consumer awareness and understanding of residential mortgage loans and are in the interest of consumers and the public, consistent with

Dodd-Frank Act section 1405(b). In addition, consistent with section 1032(a) of the Dodd-Frank Act, the proposal noted that this disclosure would ensure that the features of consumer credit transactions secured by real property 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.

Further, the Bureau proposed to require creditors to disclose the maximum periodic payment for mortgage insurance premiums corresponding to the periodic principal and interest payment disclosed pursuant to § 1026.37(c)(2)(i), separately from other escrowed amounts, pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), even if no escrow account is established for the payment of such amounts. Current § 1026.18(s) requires creditors to include mortgage insurance in the disclosure of the amounts required to be paid into escrow. However, § 1026.18(s) does not require creditors to separately disclose payments for mortgage insurance. The proposal stated that the Bureau believes that consumers would benefit from disclosure of the periodic amount of mortgage insurance payments required by the creditor, and believes that consumers would benefit from the disclosure of any required mortgage insurance payments even if no escrow account for the payment of such amounts will be established. The proposal also stated that the Bureau believes that requiring such disclosure in all cases may facilitate comparison between loans and improve overall understanding of credit terms. Accordingly, the proposal stated that this requirement promotes the informed use of credit, will improve consumer awareness and understanding of transactions involving residential mortgage loans, and is in the interest of consumers and the public, consistent with the purpose of TILA and with Dodd-Frank Act section 1405(b). Further, consistent with section 1032(a) of the Dodd-Frank Act, the proposal stated that this disclosure would have ensured that the features of consumer credit transactions secured by real property 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.

In addition, the Bureau understands that some mortgage insurance plans are structured such that periodic mortgage insurance payments decrease over time. Accordingly, the Bureau proposed to require creditors to disclose the maximum amount payable for mortgage insurance premiums, or any functional equivalent, corresponding to the periodic principal and interest payment disclosed pursuant to proposed § 1026.37(c)(2)(i). The proposal stated that the Bureau believes this disclosure will enhance consumer understanding of and facilitate comparison between loans by more accurately reflecting the amount of mortgage insurance payments over time. Proposed comment 37(c)(2)(iii)-1 would have clarified that the disclosure of taxes and insurance described in proposed § 1026.37(c)(2)(iii) is required only if the creditor will establish an escrow account for the payment of the amounts described in proposed § 1026.37(c)(4)(ii)(A) through (E), consistent with TILA section 128(b)(4)(A) and current § 1026.18(s).

Several industry commenters, including one large national mortgage lender, requested that the Bureau eliminate the proposed requirement that creditors disclose both the minimum and maximum payment range and, instead, require that future payment changes be based on maximum interest rates and payments only. These commenters stated that such a change would streamline the regulation, such as the rules for calculation of the date of termination of mortgage insurance. Several industry trade association commenters noted that proposed § 1026.37(c)(2)(iii) would not have required disclosure of estimated escrow if no escrow account would be established, but that the taxes, insurance, and assessments disclosure under

§ 1026.37(c)(4) would have been required even in the absence of an escrow account. These commenters suggested that the requirements are inconsistent and that the "estimated escrow" payments should be included even if no escrow account is established so that consumers are not misled about their costs and can better compare Loan Estimates. Similarly, a title company commenter suggested that the two disclosures could be confusing if no escrow account is established for the payment of taxes, insurance, and assessments. Finally, a large mortgage origination software provider commenter requested that the rule specify how the lack of an escrow account is to be disclosed to ensure a uniform approach in the industry.

For the reasons discussed in the proposed rule and below, the Bureau is adopting § 1026.37(c)(2) and its commentary substantially as proposed, with the following revisions and clarifications. First, the Bureau is finalizing rules regarding the disclosure of minimum and maximum payments in loans with adjustable interest rates and loans with adjustable interest rates that also contain a negative amortization feature in § 1026.37(c)(2)(i)(A) and (B). As discussed above in the section-by-section analysis of § 1026.37(c)(1)(i), a large consumer advocacy group commenter stated that if a creditor were to follow the proposed rule for the disclosure of adjustable rate loans in the case of an adjustable rate loan that permits negative amortization, it would produce a payment that is less than the maximum payment. As described above, proposed § 1026.37(c)(1)(iii) would have provided that the maximum payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest rate and comment 37(c)(1)(iii)-1 would have provided that the creditor assumes that the interest rate will rise as rapidly as possible after consummation. The commenter noted that, in an adjustable rate loan that contains a negative amortization feature, the requirement in § 1026.37(c)(1)(iii) would produce a payment that is less than the maximum payment permitted under the terms of the legal obligation. The commenter argued that, in adjustable rate loans that permit negative amortization, the maximum payment depends on the interaction of the permissible amount of negative amortization, the highest interest rate, and the latest date at which payments become fully amortizing. For such loans, the commenter asserted that the maximum payment is triggered when the maximum interest rate is applied to the maximum loan balance for the shortest amortization period, which will happen when the onset of fully amortizing payments is delayed as long as possible. The commenter asserted that, for adjustable rate loans that permit negative amortization until a contract term triggers a switch to fully amortizing payments, the maximum payment should be calculated by applying the maximum interest rate to the maximum allowed principal balance for the minimum possible number of periodic payments that remain at the end of the time when non-amortizing payments are allowed.

The Bureau has considered this comment and believes that additional guidance is necessary regarding the calculation of the maximum payment amount in adjustable rate loans with negative amortization features. Accordingly, to ensure that consumers are fully informed of the risk of payment increases associated with adjustable rate loans that also contain a negative amortization feature and to clarify the rules regarding the disclosure of maximum payment amounts in such loans, the Bureau is adopting § 1026.37(c)(2)(i)(A) and (B). As adopted, § 1026.37(c)(2)(i)(A) provides that, in the case of a loan that has an adjustable interest rate, the maximum principal and interest payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest rate, and the minimum amounts are determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate. This provision is adopted from proposed § 1026.37(c)(1)(iii), is adopted in § 1026.37(c)(2)(i) for clarifying purposes only, and is not intended to be a substantive change to the proposed rule. By contrast, § 1026.37(c)(2)(i)(B) provides that, in the case of a loan that has an adjustable interest rate and also contains a negative amortization feature, the maximum principal and interest payment amounts after the negative amortization period ends are determined by assuming the maximum principal amount permitted under the terms of the legal obligation at the end of the negative amortization period and the minimum amounts are determined pursuant to § 1026.37(c)(2)(i)(A).

The final rule also adopts comments 37(c)(2)(i)-1 and -2 to provide additional guidance to creditors on the disclosure of minimum and maximum payments in adjustable rate loans and adjustable rate loans with negative amortization features. Comment 37(c)(2)(i)-1 is generally adopted from proposed comment 37(c)(1)(iii)-3 and is not intended to be a substantive change from the proposed rule. As adopted, the comment provides that, for adjustable rate loans, in disclosing the maximum possible payment for principal and interest under § 1026.37(c), the creditor assumes that the interest rate will rise as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. The comment also provides that, for a loan with no lifetime interest rate cap, the maximum rate is determined by reference to other applicable laws, such as State usury law. In disclosing the minimum payment for purposes of § 1026.37(c), the comment provides that the creditor assumes that the interest rate will decrease as rapidly as possible after consummation, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an adjustable rate mortgage based on an index that has no lifetime interest rate floor, the minimum interest rate is equal to the margin.

Comment 37(c)(2)(i)-2, in contrast, contains guidance on the special rule in § 1026.37(c)(2)(i)(B) for calculation of the maximum principal and interest payment in an adjustable rate loan that contains a negative amortization feature. The comment notes that § 1026.37(c)(2)(i)(B) provides that the maximum amounts payable for principal and interest after the negative amortization period ends are calculated using the maximum principal amount permitted under the terms of the legal obligation at the end of the negative amortization period, and contains a cross-reference to § 1026.37(c)(1)(i)(A) and associated commentary for guidance regarding when the negative amortization period ends for purposes of § 1026.37(c). For example, if the maximum principal balance for the last payment in the negative amortization period is achieved at an interest rate that is not the maximum interest rate permitted under the terms of the legal obligation before the negative amortization period ends, future events requiring disclosure of additional, separate periodic payments or ranges of payments assume that the interest rate in effect at the end of the negative amortization period was such interest rate, and not the maximum possible interest rate. After the end of the negative amortization period, the general rule under § 1026.37(c)(2)(i)(A) regarding assumptions of interest rate changes for the maximum principal and interest payment to be disclosed applies from such interest rate. The minimum payment in an adjustable rate loan that contains a negative amortization feature is determined pursuant to the general rule under § 1026.37(c)(2)(i)(A). The Bureau believes that the guidance in comment 37(c)(2)(i)-2 regarding the calculation of the maximum payment amount in adjustable rate loans that contain a negative amortization feature ensures that consumers are informed of the risks of payment shock associated with such loans.

In addition, the Bureau is adopting comment 37(c)(2)(i)-3, which is generally adopted from proposed § 1026.37(c)(1)(i)(B)-1 and not intended to be a substantive change from the proposed rule. It provides guidance to creditors on the disclosure of balloon payment amounts on the table required by § 1026.37(c). As adopted, comment 37(c)(2)(i)-3 provides that although the existence of a balloon payment is determined pursuant to § 1026.37(b)(5) and its commentary, balloon payment amounts to be disclosed under § 1026.37(c) are calculated in the same manner as periodic principal and interest payments under § 1026.37(c)(2)(i). The comment provides an example that, for a balloon payment amount that can change depending on previous interest rate adjustments that are based on the value of an index at the time of the adjustment, the balloon payment amounts are calculated using the assumptions for minimum and maximum interest rates described in § 1026.37(c)(2)(i) and its commentary, and should be disclosed as a range of payments.

The Bureau is also adopting clarifying changes to comment 37(c)(2)(ii)-1, regarding the disclosure of mortgage insurance, in response to commenter requests for additional clarification. As proposed, that comment stated that if the consumer is not required to purchase mortgage insurance, the creditor discloses the mortgage insurance premium as "0." In response to commenter requests for clarification, the Bureau is revising comment 37(c)(2)(ii)-1 to also provide that the creditor discloses the automatic termination of mortgage insurance and the absence of mortgage insurance after coverage has terminated as "—." This change from the proposed rule is consistent with the proposed model forms in appendix H. As adopted, therefore, comment 37(c)(2)(ii)-1 provides that mortgage insurance premiums should be reflected on the disclosure required by § 1026.37(c) even if no escrow account is established for the payment of mortgage insurance premiums, that if the consumer is not required to purchase mortgage insurance the creditor discloses the mortgage insurance premium as "0," and that if the creditor is disclosing the automatic termination or the absence of mortgage insurance after coverage has terminated, the creditor discloses the mortgage insurance premium as "—."

Finally, the Bureau is amending § 1026.37(c)(2)(iii) and comment 37(c)(2)(iii)-1 for consistency with the estimated taxes, insurance, and assessments disclosure required by § 1026.37(c)(4)(ii), described below. As adopted, § 1026.37(c)(2)(iii) provides that the creditor must disclose the amount payable into an escrow account to pay some or all of the charges described in § 1026.37(c)(4)(ii), as applicable, labeled "Estimated Escrow," together with a statement that the amount disclosed can increase over time. To increase the clarity of the rule, the Bureau is deleting the word "Estimated" from the label required under § 1026.37(c)(2)(iii) so that the label is revised to "Escrow," because the word "Estimated" is incorporated into the label by the rule in § 1026.37(o)(2). The word "Estimated" is also incorporated into the label by § 1026.38(t)(2) for the table required on the Closing Disclosure under § 1026.38(c). Comment 37(c)(2)(iii)-1 provides that the escrow disclosure described in § 1026.37(c)(2)(iii) is required only if the creditor will establish an escrow account for the payment of some or all of the charges described in § 1026.37(c)(4)(ii) and that, if no escrow account for the payment of some or all such charges will be established, the creditor discloses the mortgage insurance premium as "0." These changes are technical, for consistency with the final rule regarding the disclosure of estimated taxes, insurance, and assessments required by § 1026.37(c)(4)(ii), and are not intended to be substantive changes from the proposed rule. In addition, the Bureau is modifying the design of the statement that the amount can increase over time, required by § 1026.37(c)(2)(iii) as illustrated by form H-24 of appendix H to Regulation Z (discussed in more detail in section-by-section analysis of appendix H below). The revised design uses a sentence capitalization structure for increased readability. In both the Bureau's pre-proposal qualitative consumer testing and the Quantitative Study, consumers were able to use the Loan Estimate, including the Projected Payments and Loan Terms tables, to understand their transactions and compare loans, including information about their monthly payments. *See* Kleimann Testing Report at 277-279 and 282-284; *see also* Kleimann Quantitative Study Report at 55-56.

37(c)(3) Subheadings

Proposed § 1026.37(c)(3)(i) would have provided that the labels required pursuant to § 1026.37(c)(2) must be listed under the subheading "Payment Calculation." Proposed § 1026.37(c)(3)(ii) would have provided that each separate, itemized periodic payment or range of payments to be disclosed under § 1026.37(c) must be disclosed under a subheading that states the number of years of the loan during which that payment or range of payments will apply and that those subheadings must be stated in a sequence of whole years from the date that the first such payment is due. Proposed comment 37(c)(3)(ii)-1 would have provided additional guidance on the disclosure of the number of years of the loan during which the payment or range of payments will apply, and proposed comment 37(c)(3)(ii)-2 would have provided guidance on disclosure of the years of the loan for transactions with variable terms, such as transactions where the loan term may increase based on an adjustment of the interest rate.

Several industry commenters requested clarification regarding the disclosure of the number of years of the loan during which the payment or range of payments will apply. Several industry commenters, including industry trade associations and a large credit union, argued that the rule should permit creditors to disclose the number of months or months and years during which the payment or range of payments will apply, in order to accommodate situations where the payments or ranges of payments do not equate to whole years. One large provider of mortgage origination software suggested that the final rule should provide additional guidance on disclosing "years" in construction-only loans with terms of less than one year.

Another industry commenter noted the difference between the definition of year in proposed § 1026.37(b) and § 1026.37(c). That commenter noted that it may be confusing to consumers to see the rate and payment adjustment occurring during different years, and that keeping track of multiple definitions would increase compliance burden. One law firm commenter, on behalf of a mortgage origination software provider commenter, noted that proposed form H-24(E) would have used the term “final payment” in the final column for a loan with a balloon payment as a final payment, but that there is no direct authorization in proposed rule for such a subheading. That commenter requested clarification regarding the use of “final payment” as a subheading. That commenter also suggested that the rule provide specific guidance about subheadings in construction-to-permanent loans. That commenter suggested that the construction phase of a construction-to-permanent loan should be identified using a unique column heading, such as “construction phase.”

For the reasons discussed in the proposed rule and below, the Bureau is adopting § 1026.37(c)(3) and its commentary substantially as proposed, with the following revisions and clarifications. First, the final rule contains several changes to § 1026.37(c)(3)(ii) in response to commenter requests for clarification regarding the disclosure of the number of years of the loan during which the payment or range of payments will apply. To provide additional clarity to creditors and to ensure that consumers receive a disclosure that clearly and accurately discloses future changes to their periodic payments, § 1026.37(c)(3)(ii), as adopted, provides that, except as provided in § 1026.37(c)(3)(iii) (which contains a special rule for the subheadings required for the disclosure of balloon payments that are final payments), each separate periodic payment or range of payments to be disclosed under § 1026.37(c) must be disclosed under a subheading that states the years of the loan during which that payment or range of payments will apply. The subheadings must be stated in a sequence of whole years from the due date of the initial periodic payment. As proposed, § 1026.37(c)(3)(ii) would have provided that the subheadings must be stated in a sequence of whole years from the "date that the first such payment is due." Although § 1026.37(c)(3)(ii), as adopted, would not alter the disclosure provided for in the proposed rule when an event requiring disclosure of additional separate periodic payments or ranges of payments occurs on the anniversary of the due date of the initial periodic payment, the final rule does result in a different disclosure when such an event occurs on a date other than the anniversary of the due date of the initial periodic payment. Under the proposed rule, the periodic payment that would have applied after an event requiring disclosure of additional separate periodic payments or ranges of payments that occurred on a date other than the anniversary of the initial periodic payment may not have been fully disclosed to the consumer.

An example in proposed comment 37(c)(3)(ii)-1 explains this result. That comment would have provided, among other examples, that in a loan with a 30-year term that requires interest only payments for the first 54 months then requires fixed fully amortizing payments of principal and interest for the duration of the loan and that requires mortgage insurance that would automatically terminate under applicable law after the 100th month, the creditor would label the first disclosure of periodic payments or range of payments as "Years 1-4," the second disclosure of periodic payments or range of payments as "Years 5-8," and the third disclosure of periodic payments or ranges of payments as "Years 9-30." Under this formulation of the rule, the consumer's required mortgage insurance payments would have continued until month 100 of the loan, which occurs during the ninth year, but would have been disclosed as continuing only until year eight of the loan. Under § 1026.37(c)(3)(ii) as adopted, however, the creditor would label the first disclosure of periodic payments as "Years 1-5," the second disclosure of periodic payments or range of payments as "Years 6-9," and the third disclosure of periodic payments or range of payments as "Years 10-30." Under this formulation of the rule, the consumer's required mortgage insurance payments are disclosed as continuing through the ninth year of the loan.

The Bureau believes the approach in the final rule ensures that consumers receive a disclosure that clearly and accurately discloses future changes to periodic payments, while providing clarity to creditors regarding the disclosure rules for events that require disclosure of additional separate periodic payments or ranges of payments that occur on a date other than the anniversary of the due date of the initial periodic payment. The final rule also amends comment 37(c)(3)(ii)-1 to provide additional clarity to creditors and to conform to amended § 1026.37(c)(3)(ii). As adopted, comment 37(c)(3)(ii)-1 clarifies that if an event requiring the disclosure of an additional separate periodic payment or range of payments occurs on a date other than the anniversary of the due date of the initial periodic payment, because the previous separate periodic payments or range of payments will apply during that year, such event is disclosed beginning in the next year in the sequence. The final rule also amends the examples in that comment and provides an additional example of disclosure of the years of the loan in a fixed rate loan with a term of 124 months, in response to commenter requests for clarification regarding the proper disclosure of a loan with a term that does not end on the anniversary of the due date of the initial periodic payment.

The Bureau has considered the comments requesting that the disclosure required by § 1026.37(c) state the months, rather than years, of the loan during which the periodic payment or range of payments will apply. However, the Bureau believes consumers evaluating future payments over the life of their loan would benefit from a disclosure that states projected payments in years, which is a time-horizon that is readily understandable by consumers considering their payments over the typical life of a loan, and that disclosing payments in months could detract from consumers' ability to fully understand future payment changes. The Bureau's consumer testing indicated that the Projected Payments table, which stated the changes in a sequence of whole years, enabled consumers to evaluate the risks associated with payment changes over time. *See* Kleimann Testing Report at 282-3. In addition, the Bureau's Quantitative Study concludes that consumer participants using the integrated disclosures performed statistically significantly better than consumer participants using the current disclosures at answering questions about their monthly payments, including questions about how the monthly payment change would change over time. *See* Kleimann Quantitative Study Report at 55-56. The Bureau also believes that the final rule provides clear guidance to creditors on the disclosure rules for loans where the number of months of the loan do not equate to whole years and where an event requiring disclosure of additional separate periodic payments or ranges of payments occurs on a date other than the anniversary of the due date of the initial periodic payment or range of payments.

The Bureau has also considered commenters' concerns regarding the differing disclosure rules that were proposed to apply to the dates of future periodic payment and interest rate changes under proposed § 1026.37(b)(6) and (7) and the rules that would have applied to future periodic payment changes under proposed § 1026.37(c). As discussed above, proposed § 1026.37(b)(8) would have provided that the dates required to be disclosed by § 1026.37(b)(6) (adjustments after consummation) and (7) (details about prepayment penalty and balloon payments) would have been disclosed as the year in which the date occurs, counting from the date that the interest for the first scheduled periodic payment begins to accrue after consummation, whereas "year," for purposes of § 1026.37(c) would have been defined as the twelve-month interval beginning on the due date of the first periodic payment. The Bureau acknowledges that consistent definitions would benefit consumers through a uniform disclosure and would benefit creditors by easing compliance burdens. However, the Bureau believes that different timing requirements are appropriate for disclosures that pertain to the timing of interest rate changes versus periodic payment changes. For future interest rate changes, the disclosure is properly counted from the date that interest for the first scheduled periodic payment begins to accrue after consummation. With respect to the timing of future changes to periodic payments, such as the disclosures required by § 1026.37(c), however, the Bureau believes the disclosure is properly based on the due date of the initial periodic payment because the purpose of the disclosure is to provide consumers with information about future periodic payment changes, which will not take effect until after a future interest rate change takes effect. For this reason and for the reasons discussed above in the section-by-section analysis of § 1026.37(b)(8), the Bureau is revising, for consistency with § 1026.37(c)(3), the timing requirement in § 1026.37(b)(8) with respect to the disclosures required by § 1026.37(b)(6)(i), (b)(6)(iii), and (b)(7), which pertain to future changes to periodic payments for principal and interest, but is retaining the timing requirement in § 1026.37(b)(8) with respect to the disclosure required by § 1026.37(b)(6)(ii), which pertains to the timing of future interest rate adjustments.

Finally, the Bureau has considered the commenter suggestion that the construction phase of a construction-to-permanent loan should receive a unique column heading. However, the Bureau declines to adopt such a requirement in the final rule. The Bureau understands that consumers' periodic payments for principal and interest during the construction phase of a construction-to-permanent loan generally differ from the payment that applies during the permanent phase of the loan, because these loans are typically structured as loans with interest only introductory periods. The periodic principal and interest change that occurs at the time the loan converts from the construction phase to the permanent phase of the loan is an event that requires disclosure of additional separate periodic payments or ranges of payments pursuant to § 1026.37(c)(1)(i)(A). Therefore, the different payment amounts will be disclosed to consumers as two separate periodic payments or ranges of payments. The purpose of the projected payments table is to provide consumers with a broad understanding of how their periodic payments will change over time, and is not designed to provide consumers with details about the reasons for those changes, so the Bureau does not believe it is appropriate to provide special subheadings for the construction phase of a construction-to-permanent loan in the table required by § 1026.37(c). Providing such additional information in the projected payments table could result in information overload for consumers. Furthermore, the transaction will be disclosed as a "construction" loan under the "General Information" portion of the Loan Estimate pursuant to § 1026.37(a)(9)(iii), discussed above.

37(c)(4) Taxes, Insurance, and Assessments

As discussed above, the Bureau proposed to require creditors in transactions subject to proposed § 1026.19(e) to disclose estimated payments to escrow accounts, implementing TILA sections 128(a)(16), 128(b)(4)(A) pursuant to its implementation authority under TILA section 105(a), and pursuant to its authority under Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau also proposed § 1026.37(c)(4) pursuant to this authority. Proposed § 1026.37(c)(4)(i) would have provided that creditors must disclose the label "Estimated Taxes, Insurance & Assessments." Proposed § 1026.37(c)(4)(ii) would have required creditors to disclose the sum of property taxes, mortgage-related insurance premiums required by the creditor other than amounts payable for mortgage insurance premiums, homeowner's association, condominium or cooperative fees, ground rent or leasehold payments, and special assessments, as applicable, expressed as a monthly amount. The creditor would have been required to disclose this amount even if no escrow account for the payment of some or any such charges will be established. Proposed comments 37(c)(4)(ii)-1 and -2 would have provided guidance to creditors on the meaning of mortgage-related insurance premiums and special assessments.

Proposed § 1026.37(c)(4)(iii) would have required creditors to state that the amount disclosed pursuant to § 1026.37(c)(4)(ii) can increase over time. Proposed § 1026.37(c)(4)(iv) would have required creditors to state whether the amount disclosed pursuant to § 1026.37(c)(4)(ii) includes payments for property taxes, hazard insurance, and other amounts described in proposed § 1026.37(c)(4)(ii), along with a description of any such amounts, and an indication of whether such amounts will be paid by the creditor using escrow account funds. Proposed § 1026.37(c)(4)(v) would have required creditors to provide a statement that the consumer must pay separately any amounts described in proposed § 1026.37(c)(4)(ii) that are not paid by the creditor using escrow funds. Finally, proposed § 1026.37(c)(4)(vi) would have required creditors to provide a reference to the information disclosed pursuant to § 1026.37(g)(3).

Under proposed § 1026.37(c)(4), the disclosure of estimated taxes, insurance, and assessments would have been required even where no escrow account will be established for the payment of some or any such amounts. The Bureau proposed this requirement pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). As discussed in the Kleimann Testing Report, consumer testing indicates that consumers view the total monthly payment amount as a key piece of information and look for this amount when shopping for mortgage loans. *See* Kleimann Testing Report at xxiv, 282, and 285. The proposal noted that, even when no escrow account is established for the payment of taxes and insurance, the Bureau believes that this is an important measure of the consumer's ability to afford the transaction. For this reason, the proposal stated that the Bureau believes that consumers would benefit from the disclosure of the amounts that will be required to be paid for taxes, insurance, and assessments, even if no escrow account will be established for the payment of such amounts. Absent such a disclosure, consumers may not fully comprehend the cost of their home loan on a periodic basis, and may not be as readily able to compare credit terms and make an informed decision about whether to proceed with the transaction. Accordingly, the proposal stated that the Bureau believes this modification is consistent with the purpose of TILA to promote the informed use of credit, and will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). In addition, consistent with section 1032(a) of the Dodd-Frank Act, the proposal noted that this disclosure would ensure that the features of consumer credit transactions secured by real property 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.

One large consumer advocacy commenter stated that the proposal to require creditors to disclose the amount payable for estimated taxes, insurance, and assessments even if no escrow account for the payment of such amounts would be established is an extremely important disclosure for consumers. That commenter noted that, without this information, it would be difficult to assess whether a transaction is affordable and that disreputable creditors have, in the past, used the absence of such a requirement to deceive consumers into believing a new loan was more affordable than existing loans or to confuse comparison of competing offers. Several industry commenters requested clarification on certain requirements of § 1026.37(c)(4). For example, several industry trade association commenters requested clarification regarding whether "mortgage-related insurance premiums required by the creditor, other than amounts payable for mortgage insurance" under proposed § 1026.37(c)(4)(ii)(B) has the same meaning as "homeowner's insurance" under proposed § 1026.37(c)(4)(iv). Similarly, a title company commenter suggested that the word "assessments" has different meanings and may cause confusion for consumers. Several industry trade association commenters also requested additional guidance regarding the requirement under proposed § 1026.37(c)(4)(iv) that the creditor disclose a description of amounts required to be disclosed by § 1026.37(c)(4)(ii). Industry trade associations also requested clarification regarding the type and amounts of charges that should be disclosed § 1026.37(c)(4)(iv).

A national trade association representing community associations requested that the rule limit the information creditors request regarding assessment and other association-related information for purposes of filling out the Loan Estimate, due to concerns that requests for complete information on assessments and related charges could result in additional costs to buyers and sellers and additional liability for community associations. Alternatively, that commenter suggested that the rule permit creditors to rely on information regarding homeowner's association assessments and other charges provided by the buyer or seller when preparing the Loan Estimate. Several industry commenters suggested that the rule not require disclosure of amounts required to be paid to homeowner's associations.

Several industry commenters also requested specific guidance on the disclosure of estimated taxes, insurance, and assessments in the case of subordinate liens, noting that escrow accounts are rarely established for subordinate liens and that requiring disclosure of estimated taxes, insurance, and assessments would duplicate the information disclosed for a first lien. Finally, a large mortgage origination software provider and a large bank commenter requested further guidance on how a creditor would disclose amounts required to be disclosed by proposed § 1026.37(c)(4)(ii) other than payments for property taxes and homeowner's insurance if some items would be paid using escrow account funds and others would be paid directly by the consumer.

For the reasons discussed in the proposed rule and below, the Bureau is adopting § 1026.37(c)(4) and its commentary substantially as proposed, with the revisions and clarifications described below. The Bureau is revising § 1026.37(c)(4)(ii) to provide that the creditor must disclose the sum of the charges described in § 1026.43(b)(8), other than amounts identified in § 1026.4(b)(5), expressed as a monthly amount, even if no escrow account for the payment of some or any such charges will be established. As described above, the proposed rule contained a list of specific types of charges in § 1026.37(c)(ii)(A)-(E), the sum of which the creditor should disclose pursuant to § 1026.37(c)(4)(ii), and specifically excluded amounts payable for mortgage insurance premiums. The Bureau's proposed § 1026.37(c)(4)(ii) was substantially similar to the proposed definition of "mortgage-related obligations" in the Board's 2011 ATR Proposal, except that proposed § 1026.37(c)(4)(ii) would not have included amounts payable for mortgage insurance premiums. To address concerns and feedback, the Bureau's 2013 ATR Final Rule adopted a modified definition of mortgage-related obligations in § 1026.43(b)(8) by referring to premiums and similar charges identified in § 1026.4(b)(5), (7), (8), or (10), if required by the creditor, instead of the proposed language, which referred to "mortgage-related insurance." The Bureau determined that referencing components of the definition of the finance charge in § 1026.4, rather than adopting a new definition of "mortgage-related insurance," would facilitate compliance for creditors, since the definition of the finance charge is a long-standing part of Regulation Z. As adopted, § 1026.43(b)(8) defined mortgage-related obligations to mean property taxes, premiums and similar charges identified in § 1026.4(b)(5), (7), (8), or (10) that are required by the creditor; fees and special assessments imposed by a condominium, cooperative, or homeowner's association; ground rent; and leasehold payments. The Bureau's 2013 ATR Final Rule also significantly expanded the commentary regarding the definition of "mortgage-related obligations" to provide additional clarification and guidance.

To ease compliance burden and avoid regulatory complexity, § 1026.37(c)(4)(ii) cross-references the definition of mortgage-related obligations in § 1026.43(b)(8), rather than adopting a separate definition of the term. Like proposed § 1026.37(c)(4)(ii), however, amounts payable for mortgage insurance premiums are excluded because they are disclosed separately in the projected payments table. Therefore, as adopted, § 1026.37(c)(4)(ii) provides that the creditor must disclose the sum of the charges described in § 1026.43(b)(8), other than amounts identified in § 1026.4(b)(5), expressed as a monthly amount, even if no escrow account for the payment of some or any such charges will be established. The Bureau believes these adjustments address concerns expressed by some industry commenters regarding the meaning of the phrase "mortgage-related insurance premiums required by the creditor, other than amounts payable for mortgage insurance" and the term "assessments" in the proposed rule and will simplify compliance for creditors. The Bureau believes these revisions are clarifying in nature and do not alter the substance of the rule as proposed.

In addition, to increase clarity of the rule, the Bureau is deleting the word "Estimated" from the label in the regulatory text of § 1026.37(c)(4)(i) so that the label in the regulatory text is revised to “Taxes, Insurance & Assessments, ” because the word “Estimated” is incorporated into the label by the rule in § 1026.37(o)(2). The word “Estimated” is also incorporated into the label by § 1026.38(t)(2) for the table required on the Closing Disclosure under § 1026.38(c).

As discussed above, proposed comments 37(c)(4)(ii)-1 and -2 would have provided guidance to creditors regarding the requirement to disclose mortgage-related insurance premiums and special assessments. The Bureau is not finalizing these comments as proposed due to the final rule’s cross-reference to the definition of mortgage-related obligations in § 1026.43(b)(8). Instead, the Bureau is adopting a new comment 37(c)(4)(ii)-1 which provides that creditors should see the commentary under § 1026.43(b)(8) for guidance on the charges that are included in taxes, insurance, and assessments for purposes of § 1026.37(c)(4)(ii), except that commentary related to amounts identified in § 1026.4(b)(5) (mortgage insurance premiums) is inapplicable to the disclosure required by § 1026.37(c)(4)(ii).

The Bureau is also adopting additional commentary to § 1026.37(c)(4) to address requests for clarification raised by commenters. As noted above, commenters requested additional guidance regarding the descriptive statements to be used for amounts other than property taxes and homeowner’s insurance. To address commenter concerns, the Bureau is adopting comment 37(c)(4)(iv)-1, which provides that, if the amount disclosed pursuant to § 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount other than amounts for payment of property taxes or homeowner’s insurance, the creditor may disclose a descriptive statement of one such amount along with an indication that additional amounts are also included, such as by using the phrase “and additional costs.”

As described above, commenters requested further guidance on how a creditor would reflect the amounts required to be disclosed by proposed § 1026.37(c)(4)(ii), other than payments for property taxes and homeowner's insurance, if some items would be paid using escrow account funds and others would be paid directly by the consumer. As proposed, neither § 1026.37(c)(4)(ii) nor its commentary specifically addressed this issue. To provide clarity and to ease compliance burden, the Bureau is adopting comment 37(c)(4)(iv)-2, which provides that if the amount disclosed pursuant to § 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount other than amounts for payments of property taxes or homeowner's insurance and only some of those amounts will be paid by the creditor using escrow account funds, the creditor may indicate that only some of those amounts will be paid using escrow account funds, such as by using the word "some."

As previously noted, the Bureau also received comments requesting clarification as to whether the disclosure of estimated taxes, insurance, and assessment amounts applied to subordinate liens. These commenters suggested that the estimated taxes, insurance, and assessments disclosure would not be appropriate for subordinate liens because creditors do not typically establish escrow accounts for subordinate liens and because the disclosed amounts would already be disclosed with respect to the first lien. The Bureau acknowledges these commenters' concerns but, as noted above and in the proposed rule, the Bureau's consumer testing indicates that consumers view the total monthly payment amount as a key piece of information and look for this amount when shopping for mortgages. Therefore, as noted in the proposal, even when no escrow account is established for the payment of taxes and insurance, the Bureau believes that this is an important measure of the consumer's ability to afford the transaction. For this reason, the Bureau believes that consumers will benefit from the disclosure of the amounts that will required to be paid for taxes, insurance, and assessments, even if no escrow account will be established for the payment of such amounts. Although subordinate liens do not typically require escrow accounts under current industry practice, taxes, insurance, and assessment payments may make up a significant part of consumers' loan-related expenses. Absent such a disclosure, consumers may not fully comprehend the cost of their home loan on a periodic basis, and may not be as readily able to compare credit terms and make an informed decision about whether to proceed with the transaction. The Bureau does not believe that the fact that estimated taxes, insurance, and assessment information would be disclosed for both first and subordinate liens creates a risk of consumer confusion that outweighs these benefits for consumers.

Nor does the Bureau believe it is appropriate to adopt specific guidance in the final rule with respect to the information creditors request from community associations for assessment and other costs. The rule requires that creditors make good faith estimates of the disclosures on the Loan Estimate required by § 1026.37(c), *see* § 1026.19(e)(1)(i) and associated commentary above, and that the Loan Estimate contains a number of disclosure requirements related to third-party costs, including information related to community association costs and assessments. The Bureau believes that creditors will determine appropriate methods to make good faith estimates of such amounts, and that it is not appropriate to prescribe by rule the exact method that creditors must use to make such estimates. For this reason, the Bureau is not adopting a provision in the rule that would dictate how creditors will make good faith estimates of community association assessments and other costs.

The Bureau is modifying the design of the statements that the disclosed amount can increase over time, required by § 1026.37(c)(4)(iii) as illustrated by form H-24 of appendix H to Regulation Z (discussed in more detail in section-by-section analysis of appendix H below). The revised design uses a sentence capitalization structure for increased readability. Indeed, in both the Bureau's pre-proposal qualitative consumer testing and the Quantitative Study, consumers were able to use the Loan Terms and Projected Payments tables on page 1 of the Loan Estimate to understand their transactions and compare loans, including information about their total monthly costs and estimated taxes and insurance. *See* Kleimann Testing Report at 282-286; Kleimann Quantitative Study Report at 42-45 and 52-53.

37(c)(5) Calculation of Taxes and Insurance

As previously discussed, section 1465 of the Dodd-Frank Act added to TILA new section 128(b)(4)(A), which provides that, in the case of any consumer credit transaction secured by a first mortgage on the principal dwelling of the consumer, other than an open-end credit plan or reverse mortgage, for which an escrow account has been or will be established in connection with the transaction for the payment of property taxes, homeowner's (also referred to and including hazard) and flood insurance premiums, as applicable, or other periodic payments with respect to the property, the disclosures required by TILA section 128(a)(6) must take into account the amount of any monthly payment to such account, in accordance with section 10(a)(2) of RESPA. In addition, new TILA section 128(b)(4)(B) requires that the amount taken into account under TILA section 128(b)(4)(A) for the payment of property taxes, hazard or flood insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after consummation of the transaction. That amount must include the value of any improvements on the property or to be constructed on the property, if known, even if such construction costs are not financed from the proceeds of the transaction, and the replacement costs of the property for hazard insurance, in the initial year after the transaction.

Pursuant to the Bureau's implementation authority under TILA section 105(a), proposed

§ 1026.37(c)(5) would have implemented this requirement for transactions subject to proposed § 1026.19(e) and required that the estimated escrow and estimated taxes, insurance, and assessments disclosures required pursuant to proposed § 1026.37(c)(2)(iii) and (4)(ii), respectively, reflect (1) the taxable assessed value of the real property securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, whether or not such construction will be financed from the proceeds of the transaction, if known, for property taxes; and (2) the replacement costs of the property during the initial year after the transaction, for hazard and flood insurance.

Pursuant to its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b), the Bureau proposed to expand the requirements of TILA section 128(b)(4)(A) and (B) to cover all transactions subject to proposed § 1026.19(e), including transactions where no escrow account will be established for the payment of property taxes or hazard insurance, transactions that are secured by real property that does not include the principal dwelling of the consumer, and transactions secured by subordinate liens. The proposal noted that these modifications are consistent with the purposes of TILA, as they may promote the informed use of credit by allowing consumers to more readily compare loans. Further, applying a single disclosure rule to all transactions subject to proposed § 1026.19(e) may ease compliance burden for creditors. Accordingly, the proposal noted that these modifications will improve consumer awareness and understanding of residential mortgage loans and are in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). In addition, consistent with section 1032(a) of the Dodd-Frank Act, the proposal noted that the proposed disclosure would ensure that the features of consumer credit transactions secured by real property 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.

One large consumer advocacy commenter suggested that the requirements of § 1026.43(c)(5) be supplemented with a requirement that creditors calculate the estimated taxes based on what the consumer will pay after consummation, rather than what the seller pays. The commenter noted that, in many states, homeowners may be eligible for exemptions or abatements that reduce their property taxes, but for which the buyer may be ineligible. The commenter noted that, if a creditor bases the estimate for property taxes on what the seller is paying, the estimate may be too low. The commenter noted a similar problem with loans that fund construction that will increase the value of the property. Several industry commenters expressed concern regarding the proposed requirement that estimated property taxes reflect the taxable assessed value of the real property securing the transaction after consummation, including the value of any improvements to the property or to be constructed on the property, if known, even if such construction would not be financed from the proceeds of the transaction. Several industry trade associations expressed concern over the "if known" requirement in the proposed rule, stating that creditors would need to protect themselves against future claims that they knew about the improvements and should have projected higher taxes. Several industry commenters suggested that creditors should be able to rely on a statement from the consumer that no improvements are planned for the property. A large bank commenter expressed similar concerns, and suggested that the better course would be for the rule to provide that, for refinancings, the disclosures should be based on current taxes and insurance costs and that, with regard to purchase and construction loans, the disclosures should be based on the best known actual taxes and insurance costs.

For the reasons discussed in the proposed rule, the Bureau is adopting § 1026.37(c)(5) as proposed, except that the reference to homeowner's insurance in § 1026.37(c)(5)(ii) is revised for consistency with § 1026.37(c)(4)(ii). As described above, § 1026.37(c)(5) implements the requirement in TILA section 128(b)(4)(B), which requires that the amount taken into account under TILA section 128(b)(4)(A) for the payment of property taxes, hazard or flood insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after consummation of the transaction. Under the statute, that amount must include the value of any improvements on the property or to be constructed on the property, if known, even if such construction costs are not financed from the proceeds of the transaction, and the replacement costs of the property for hazard insurance, in the initial year after the transaction.

The Bureau recognizes industry commenters' concerns regarding the requirement that the disclosure of estimated property taxes be based on the taxable assessed value of the real property securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, if known, whether or not such construction will be financed from the proceeds of the transaction. However, the requirement is statutory, and the Bureau believes that the purpose of the statutory provision is to provide consumers with reliable estimates of their future property taxes when comparing and assessing the affordability of their loans. The Bureau believes that consumers would benefit from a disclosure that accounts for planned future improvements on the property, even if the improvements will not be financed with the loan proceeds. Further, the Loan Estimate requires only that creditors disclose a good faith estimate of the disclosures required by § 1026.37 (*see* § 1026.19(e)(1)(i) and associated commentary), that such estimates are based on the best information reasonably available to the creditor at the time of the disclosure, and that the "reasonably available" standard requires the creditor, acting in good faith, to exercise due diligence in obtaining the information. *See* comments 17(c)(2)(i)-1 and 19(e)(1)(i)-1.

The Bureau believes that creditors will determine appropriate and efficient methods to make good faith estimates of such amounts based on the best information reasonably available, and that it is not appropriate to prescribe by rule the exact method that creditors must use to make such estimates.

37(d) Costs at Closing

The Bureau proposed § 1026.37(d) which would have required the disclosure of an estimate of the cash needed from the consumer at consummation of the transaction, with a breakdown of the amounts of loan costs, other costs, and lender credits associated with the transaction. The Bureau did receive comments regarding the calculation of these amounts in response to proposed paragraphs (f), (g) and (h), which are discussed below in connection with the respective paragraphs.

Several commenters stated that the cash to close amount should not be listed on the first page of the Loan Estimate, or at all, as the amount should not be a basis by which consumers analyze loans. To the contrary, consumer testing conducted by the Bureau prior to issuing the proposal indicated that consumers are able to use the cash to close amount, together with the other disclosed information on the first page of the Loan Estimate, to evaluate the affordability of a transaction, and to make sophisticated trade-offs among closing costs, interest rate, and payments based on personal situations. *See* Kleimann Testing Report at 277-80.

As more fully discussed in the section-by-section analysis of §§ 1026.37(h) and 1026.38(d) and (e), below, several industry and consumer advocacy group commenters stated that the cash to close amount would be difficult for consumers to understand, especially in the case of a cash-out refinance where the cash to close amount disclosed under proposed § 1026.37(d)(1) would have been negative. These commenters stated that consumers would have difficulty in understanding negative numbers in this context. In response to these comments, the Bureau conducted consumer testing after issuance of the proposal on an alternative method of disclosing the total cash to close amount and the calculation of the cash to close amount for transactions without a seller to remove the possibility of a negative disclosure in cash-out refinance transactions. This consumer testing focused on the cash to close disclosure on page 1 of the Loan Estimate, as required by § 1026.37(d), as well as other related parts of the Loan Estimate and Closing Disclosure. The testing consisted of three rounds of qualitative testing of revised Loan Estimates and Closing Disclosures for refinance transactions, and included 21 consumers. *See* Kleimann Post-Proposal Testing Report at 51-72. The results indicated that consumers were able to readily and easily understand the nature of the transaction using the revised cash to close disclosure specifically designed for transactions without sellers being finalized under § 1026.37(d)(2), especially in the context of a cash-out refinance. *See* Kleimann Post-Proposal Testing Report at 58, 71.

Some industry commenters also stated that consumers using the cash to close table on page 1 of the proposed Loan Estimate could experience confusion between the amount of closing costs associated with their loan and the amount of cash that the consumer would have to pay at closing In addition, based on the results from the Bureau's Quantitative Study with respect to consumers' ability to identify the amount of the estimated total closing costs, the Bureau determined that this area of the Loan Estimate could be improved to enable consumers to identify their total closing costs more readily. For almost all of the questions in the Bureau's

Quantitative Study, consumer participants using the Bureau's integrated disclosures performed statistically significantly better than those who used the current disclosures under TILA and RESPA. For only one question out of the 39 key questions of the study did consumers using the current disclosures perform statistically significantly better than those who used the integrated disclosures. This one question asked respondents using the current early TILA disclosure and RESPA GFE: "How much are your settlement charges?" and asked respondents using the Bureau's integrated disclosures: "How much are your closing charges?" For respondents using the current disclosures, 86.2 percent answered this question correctly, but only 46.3 percent of respondents using the integrated disclosure answered this question correctly. However, for the integrated disclosures, 51.6 percent of the respondents provided the cash to close amount, meaning that only 2.1 percent of respondents provided an answer other than the cash to close or total closing costs. *See* Kleimann Quantitative Study Report at 74. The Bureau believes from these results that the respondents were using the proper location on the integrated disclosure, but provided the amount that the disclosure design emphasized, instead of reviewing the text to the right of the cash to close number to identify the total closing costs (the amount of the total closing costs was embedded within the text to the right of the cash to close amount on the proposed Loan Estimate).[270]

In light of the comments received regarding the cash to close table and the above-mentioned results from the Bureau's Quantitative Study, the Bureau determined to develop a revised format of the cash to close table for all transactions. The Bureau revised the table to place more emphasis on the total closing costs, so that equal emphasis is placed on the cash to

[270] In contrast, the RESPA GFE places emphasis on the amount of settlement charges on page 1, but does not include the amount of cash the consumer needs to close the transaction.

close with this revision the Bureau believed consumers can more readily identify the estimated total closing costs. The Bureau tested the revised table with consumers at its qualitative consumer testing conducted after issuance of the proposal (see part III.G above) and found that the table enabled consumers to identify readily the estimated closing costs as well as use the estimated cash to close to evaluate the affordability of the transaction.

Accordingly, the Bureau is revising § 1026.37(d) to reflect the new heading for the table, "Costs at Closing," in the heading of the section. The Bureau also is revising the format of the Costs at Closing table to contain two rows underneath the new heading, as illustrated by form H-24 of appendix H to Regulation Z. The first row, under final § 1026.37(d)(1)(i), will contain the estimated closing costs, including separate disclosures of the total loan costs, other costs, and lender credits associated with the transaction, as well as a reference to the closing costs details required by § 1026.37(f) and (g) (disclosed on page 2 of the Loan Estimate). The second row, under final § 1026.37(d)(1)(ii), will contain the estimated cash to close, a statement that the amount includes closing costs, and a reference to the calculating cash to close table required by § 1026.37(h) (disclosed on page 2 of the Loan Estimate). The table required under § 1026.37(d)(1) will be required for all transactions subject to § 1026.19(e) and (f) and use cross-references from the provisions of § 1026.37(h)(1) for the amounts to be disclosed.

As noted above, the Bureau also is revising § 1026.37(d) to provide for an optional alternative cash to close disclosure under § 1026.37(d)(2) to address commenters' concerns regarding disclosure of a negative cash to close number in cash-out refinances. The revisions provide an optional alternative cash to close disclosure for transactions without a seller under § 1026.37(d)(2), which will use cross-references from the provisions of § 1026.37(h)(2) for the amounts to be disclosed. The Bureau also is adopting comments 37(d)(2)-1, which clarifies that the use of the alternative table under § 1026.37(d)(2) must be used in conjunction with the alternative calculating cash to close table under § 1026.37(h)(2); and 37(d)(2)-2, which provides an example of how to disclose whether the cash is due from or to the consumer with the use of check boxes as shown in form H-24(D) of appendix H to Regulation Z.

Pursuant to its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), the Bureau is requiring creditors to provide the estimated total closing costs imposed upon the consumer and the estimated amount of cash needed at consummation from the consumer under § 1026.37(d). This disclosure will effectuate the purposes of TILA by promoting the informed use of credit and will ensure the features of the mortgage transaction are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, because it will indicate to the consumer the amount the consumer will have to pay at consummation of the credit transaction and closing of the real estate transaction.

37(e) Web site Reference

The Bureau proposed § 1026.37(e) which would have required creditors to include a statement on the Loan Estimate notifying the consumer that additional information and tools regarding mortgage loans may be found at the Bureau's website and a reference to the link or uniform resource locator (URL) address for the Bureau's website. Appendix C to Regulation X includes a statement in the RESPA GFE that directs consumers to HUD's website and other sources of additional information, stating the following, "For more information, see HUD's Special Information Booklet on settlement charges, your Truth-in-Lending Disclosures, and other consumer information at www.hud.gov/respa." Regulation Z does not contain a similar provision for the early TILA disclosure. The Bureau believed that a disclosure in the Loan

Estimate directing consumers to additional information and tools on its website may help consumers understand the mortgage process and the various loan products in the market, and consequently better understand their loan transaction and make informed decisions about whether to enter into a loan transaction or which loan product best meets their needs. At the Bureau's consumer testing of the proposed language directing consumers to the website for general information and tools, consumers stated that they would access the Bureau's website address disclosed at the bottom of page 1 of the Loan Estimate. *See* Kleimann Testing Report at 149. The Bureau did not receive comments concerning the information disclosed pursuant to proposed § 1026.37(e). Accordingly, the Bureau is adopting § 1026.37(e) as proposed, with a technical change to state the full term "uniform resource locator" instead of the abbreviation of "URL" in the regulatory text to provide greater clarity, and to change the address of the website, because the Bureau will publish a dedicated website for information relating to the Loan Estimate and the mortgage application and shopping process generally.

The Bureau is using its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to require disclosure of the Bureau's website in proposed § 1026.37(e). As stated above, the Bureau believes that a disclosure in the Loan Estimate directing consumers to additional information and tools on its website may help consumers understand the mortgage process and the various loan products in the market, and consequently better understand their loan transaction and make informed decisions about whether to enter into a loan transaction or which loan product best meets their needs. Accordingly, this disclosure will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

37(f) Closing Cost Details; Loan Costs

Under section 5(c) of RESPA creditors must provide applicants for federally related mortgage loans with a good faith estimate of the amount or range of charges for specific settlement services the applicant is likely to incur in connection with the settlement of the loan. 12 U.S.C. 2604(c). Section 1024.7 of Regulation X currently implements this mandate by requiring creditors and mortgage brokers to provide the RESPA GFE, which must be completed in accordance with the instructions in appendix C to Regulation X. Appendix C sets out specific instructions for the information that must be disclosed on the RESPA GFE, including the loan costs that must be included and how to identify those costs on the disclosure.

As discussed above, Dodd-Frank Act section 1032(f) requires that the Bureau propose rules to combine these RESPA disclosures with the disclosures required by TILA. In addition to existing TILA disclosure requirements, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to require, in the case of a residential mortgage loan, disclosure of the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. 15 U.S.C. 1638(a)(17).

The Bureau proposed to require creditors to provide the loan costs and other costs imposed upon the consumer in tables as part of the integrated Loan Estimate. Proposed § 1026.37(f) and (g) would have implemented these early disclosure requirements of TILA and RESPA by setting out details relating to the costs for consummating the mortgage loan, separated into two categories: loan costs and other costs. Based on its consumer testing, the Bureau believed that early disclosure of estimated loan costs and other costs, as set forth in proposed § 1026.37(f) and (g), would have improved consumer understanding of the credit and property transactions. The Bureau believed that these disclosures would have effectuated the purpose of TILA by promoting the informed use of credit and assuring a meaningful disclosure to consumers. The Bureau believed that the disclosures also would have satisfied the RESPA requirement to provide a consumer with a good faith estimate of the amount or range of charges for specific settlement services the consumer is likely to incur in connection with the settlement. In addition, these disclosures would have ensured that the features of the mortgage loan transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

In particular, proposed § 1026.37(f) would have required the creditor to itemize, as "Loan Costs," its fees and other charges to the consumer for extending the credit or that compensate a mortgage broker for originating the transaction. The creditor would have been required to disclose the individual itemized charges, including charges to third parties for services required by the creditor or mortgage broker for consummation, along with subtotals for prescribed categories of those itemized charges, and the total of all such itemized charges. In general, these charges are currently required to be disclosed—as itemized or aggregate charges and amounts—on the RESPA GFE, the RESPA settlement statement, or both.[271]

[271] The Bureau acknowledged in the proposal that, on June 20, 2012, HUD's Office of Policy Development and Research and the Urban Institute released a study entitled "*What Explains Variation in Title Charges? A Study of*

Proposed comment 37(f)-1 would have explained that the items disclosed as Loan Costs pursuant to § 1026.37(f) are those that the creditor or mortgage broker require for consummation. Proposed comment 37(f)-2 would have provided a cross-reference to the commentary under proposed § 1026.19(e)(1)(ii), which would have discussed the requirements and responsibilities of mortgage brokers that provide the disclosures required under §§ 1026.19(e) and 1026.37(f).

Commenters had three general comments related to the itemization of cost for services provided by or required to be obtained by or for the creditor in § 1026.37(f). First, two national trade associations and some other industry commenters stated that settlement charges that are offset by lender credits or rebates, either from an increased interest rate or as a matter of accommodation, should not be required to be itemized on the Loan Estimate at all. However, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to require, in the case of a residential mortgage loan, disclosure of the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. 12 U.S.C. 1638(a)(17). If any settlement charges are not included on the Loan Estimate because they are paid from an increased interest

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Five Large Markets," available at http://www.huduser.org/portal/publications/hsgfin/title_charges_2012.html, which observed a positive association between the number of items listed and net service fees was statistically significant after taking home prices into account. *See Id*. at 29. The study was based on RESPA settlement statements of FHA loans originated in 2001. *See Id*. at 13. However, the report could not determine whether this indicates additional value to the consumer or additional costs to the settlement agent due to limitations of the data. *Id.* The study states that "there is no way to ascertain from the data whether an itemized cost is an attempt to confuse consumers or the provision of an additional, valuable service that the homebuyer is willing to pay for. Both interpretations are plausible." *Id.* Under the proposal, itemization would have been permitted on the Loan Estimate, but highly visible subtotals in gray shading and bold font are displayed above the itemized charges for specific categories of costs. Based on its consumer testing, the Bureau believed that the highly visible subtotals, along with the highly visible "Services You Can Shop For" subcategory of Closing Costs on the Loan Estimate, would inform consumers that they can shop for their own service providers and provide them with readily comparable cost categories to shop for between creditors and service providers. Such shopping for settlement service providers, according to the study, could provide "significant benefits to consumers." *See Id.* at 28. At the Bureau's Quantitative Study, the Bureau's integrated disclosure performed better than the current RESPA GFE and early TILA disclosures at informing consumers that they can shop for certain settlement service providers. *See* Kleimann Quantitative Study Report at 68.

rate or from a contractually provided credit or rebate from the creditor, then the aggregate amount of settlement charges for all settlement services provided in connection with the loan would not be disclosed on the Loan Estimate, thereby frustrating the requirement of section 1419 of the Dodd-Frank Act. Eliminating some settlement charges from the Loan Estimate also would reduce the ability of consumers to identify the settlement services that they could shop for, to negotiate the charges, and to compare such services and charges between creditors. *See* Kleimann Testing Report at 288. The Bureau believes that, to improve consumer understanding of the nature and charges associated with the transaction, consumers should be provided information on the services required by the creditor, and the cost of those services, even if the creditor is providing credits to offset the cost of those required services.

Second, one national trade association suggested that the layout of proposed § 1026.37(f) should track the categories established by proposed § 1026.19(e)(3) to determine whether a charge is disclosed in good faith on the Loan Estimate. The Bureau believes that these categories can only be determined by an analysis of whether or not a consumer shopped for a particular service in the category of service for which the consumer is permitted to shop. This can be determined only at the end of the underwriting process. *See* the section-by-section analysis of § 1026.19(e)(3)(i) and (ii), above. Determining the placement of charges on the Loan Estimate by reference to criteria that can be established only by events occurring after the Loan Estimate is disclosed would be unworkable. In addition, the Bureau's consumer testing and Quantitative Study established that consumers are able to determine the charges that they can shop for and negotiate other fees using the layout as proposed. *See* Kleimann Testing Report at 85, 104, 126, 134, and 240; Kleimann Quantitative Study Report at 45.

Lastly, a title insurance company commenter stated that additional lines should be provided for the itemization under the respective subparagraphs of proposed § 1026.37(f) because creditors, secondary market participants, and others will want to see more itemization than the proposed Loan Estimate permits. The comment, however, focused on itemization of charges on the Closing Disclosure, which does not contain the limitations on itemization that are present on the Loan Estimate. The limitations on itemization present under proposed § 1026.37(f) were designed to prevent information overload for consumers, as well as to provide consumers with a detailed list of their closing costs on a single page, to aid consumers' understanding of their transactions, and to enable consumers to easily compare the fees and charges of different loans between one creditor or multiple creditors. Accordingly, the Bureau is adopting the general requirement that an itemized list of fees and charges be disclosed and § 1026.37(f) and its accompanying commentary generally as proposed, except to the extent that amendments are made to the subparagraphs and accompanying commentary as described below.

37(f)(1) Origination Charges

Under the Bureau's proposed § 1026.37(f)(1), charges that would have been included on the Loan Estimate under the subheading of "Origination Charges" are those that the consumer will pay to the creditor and any loan originator for originating and extending the credit. In addition, proposed § 1026.37(f)(1) would have required the creditor to include under the subheading "Origination Charges" the points that the consumer will pay to reduce the interest rate separately itemized as both the percentage of the loan amount, and the resulting calculation of the dollar amount. The line's label would have read: "_ % of Loan Amount (Points)," and the blank before the percentage sign would have been filled in with the applicable number.

Proposed comment 37(f)(1)-1 would have clarified that charges that are included under the subheading "Origination Charges" pursuant to § 1026.37(f)(1) are those charges paid by the consumer for which the amount is paid to the creditor or loan originator for originating and extending the mortgage credit. The comment would have included cross-references to § 1026.37(o)(4) for rules on rounding amounts disclosed, comment 19(e)(3)(i)-2 for a discussion of when a fee is considered to be "paid to" a person, and comment 36(a)-1 for a discussion of the meaning of "loan originator." Proposed comment 37(f)(1)-2 would have clarified that only loan originator charges paid directly by the consumer are included in the items listed pursuant to § 1026.37(f)(1), but states that charges paid by the creditor through the interest rate are disclosed on the Closing Disclosure pursuant to § 1026.38(f)(1). Proposed comment 37(f)(1)-3 would have provided examples of the items that might be disclosed under the subheading "Origination Charges" on the Loan Estimate. Proposed comment 37(f)(1)-4 would have explained that if the consumer is not charged any points for the loan, the creditor may leave blank the percentage of points required by § 1026.37(f)(1)(i), but must disclose the dollar amount of "$0." Proposed comment 37(f)(1)-5 would have clarified that the creditor may decide the level of itemization of origination charges that is appropriate, subject to the limitations in § 1026.37(f)(1)(ii) on the number of lines.

The Bureau noted in the proposal that TILA section 128(a)(18), as added by Dodd-Frank Act section 1419, requires the creditor to disclose, for residential mortgage loans, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor. In the discussion of proposed § 1026.37(l) in the proposal, the Bureau noted that research regarding consumer comprehension and behavior and the results of the Bureau's consumer testing suggest that an effective disclosure regime minimizes the risk of consumer distraction and information overload by providing only information that will assist most consumers. The Bureau evaluated the usefulness to consumers and others at early stages of the loan process of the disclosures required by TILA section 128(a)(18), as added by Dodd-Frank Act section 1419. Based on that evaluation, and as discussed further below, the Bureau proposed to use its authority under TILA section 105(a) and (f), RESPA section 19(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to exempt transactions subject to proposed § 1026.19(e) from certain of the itemized disclosures required by TILA section 128(a)(18). In particular, for transactions subject to proposed § 1026.19(e), proposed § 1026.37(f)(1) would have required the creditor to disclose the amounts of origination fees paid by the consumer to creditors and loan originators in connection with the loan, but not any amounts received by a loan originator from the creditor. However, as discussed in the proposal with respect to proposed § 1026.38(f)(1), the full disclosure required by TILA section 128(a)(18) would have been included in the disclosure requirements for transactions subject to proposed § 1026.19(f). In other words, although certain TILA section 128(a)(18) disclosures would not have been included in the Loan Estimate, they would have been provided in the Closing Disclosure.

The RESPA GFE currently required by Regulation X aggregates all compensation paid to all loan originators and includes a separate item that reflects as a "credit" to the consumer fees received by mortgage brokers from the creditor rather than the consumer. A major goal of the RESPA GFE disclosure requirements was to provide consumers with a clear disclosure of any interest rate-based payments being made by creditors to mortgage brokers who may be working with the consumer. Regulation X provides generally that lender and mortgage broker origination charges are to be included on page 2 of the RESPA GFE, in Block 1 ("Our origination charge"), Block 2 ("Your credit or charge (points) for the specific interest rate chosen"), and Line A ("Your Adjusted Origination Charges"). *See* 12 CFR part 1024, appendix C (instructions for

"Your Adjusted Origination Charges"). Under the disclosure requirements in Regulation X, all charges for services related to the creation of the mortgage loan are to be included on the RESPA GFE in the single amount stated in Block 1 and the single amount in Block 2, as applicable. The RESPA GFE disclosure requirements prohibit creditors and mortgage brokers from separately charging any fees for originating the loan that are in addition to the amounts included in Blocks 1 and 2. *Id.* (instructions for "Block 1").

The requirements related to the disclosures in Blocks 1 and 2 of the RESPA GFE have been a source of uncertainty for creditors, mortgage brokers, and consumers. HUD provided informal guidance to address some of the uncertainty in a number of its HUD RESPA FAQs and HUD RESPA Roundups, much of which involved where and how to disclose compensation paid directly and indirectly to mortgage brokers.

In 2010, subsequent to the issuance of HUD's 2008 RESPA Final Rule, the Board established by regulation in § 1026.36 of Regulation Z restrictions on the compensation of loan originators, including mortgage brokers. *See* 75 FR 58509 (Sept. 24, 2010). The Board adopted these restrictions only after concluding that disclosure of creditor-paid compensation did not provide sufficient protection for consumers.[272] The Bureau noted in the proposal that it believes consumers may not benefit from any disclosure of interest rate-based compensation, citing the Board's Regulation Z restrictions on the compensation of loan originators. The Bureau's

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[272] The Board's 2010 Compensation Final Rule discussed the history of efforts by the Board to address concerns regarding consumers' understanding of fees received by mortgage brokers from creditors. Before issuing that final rule, the Board considered proposed disclosures of such compensation, but had withdrawn the proposed disclosures because of concern that they could confuse consumers and undermine their decisionmaking rather than improve it. 75 FR 58509, 58511 (Sept. 24, 2013). A 2008 study referenced in the Board's 2010 Compensation Final Rule indicated additional disclosures may not help consumers understand and avoid financial incentives for loan originators that may be contrary to consumer interests. *Id.* The study found that consumers were confused by, and in some cases did not appropriately apply, the information provided in disclosures about mortgage broker compensation arrangements. Macro Int'l Inc., *Consumer Testing of Mortgage Broker Disclosures* (July 10, 2008), available at http://www.federalreserve.gov/newsevents/press/bcreg/20080714regzconstest.pdf.

proposal also noted that it was engaged in six other rulemakings (*i.e.*, the Title XIV Rulemakings) that related to mortgage credit and intended that the rulemakings function collectively as a whole, and that the Bureau may have to modify aspects of the proposed rule to maintain consistency with final determinations made after opportunity for public comment in the other, related rulemakings. *See* 77 FR 51116, 51209 (August 23, 2012). Specifically, Dodd-Frank Act section 1403 amended TILA section 129B(c)(2) to prohibit an origination fee or charge that is paid to a mortgage originator by any person other than the consumer, unless the mortgage originator does not receive compensation directly from the consumer and the consumer does not make an upfront payment of discount points, origination points, or fees (other than certain third-party fees). 15 U.S.C. 1639b(c)(2)(B). TILA section 129B(c)(2) as amended also provides the Bureau with the authority to waive or create exemptions from this prohibition with respect to the clause against the consumer making an upfront payment of discount points, origination points, or fees, where doing so is in the interest of consumers and in the public interest. In the 2013 Loan Originator Final Rule, the Bureau exercised its authority under TILA section 129B(c)(2) and created an exemption from the upfront payment of discount points, origination points or fees (other than third-party fees). *See* 78 FR 11280, 11370 (February 15, 2013). Therefore, the disclosure of discount points under proposed § 1026.37(f)(1) has not been rendered moot by the Title XIV Rulemakings.

The Bureau sought comment on how, in light of amended TILA section 129B(c)(2), the Bureau should refine or modify the way in which origination charges are disclosed under proposed § 1026.37(f)(1). The Bureau did not receive comments on issue. The Bureau also sought comment on whether the final rule should require that fees received by loan originators from the creditor be included in the Loan Estimate. In addition, the Bureau sought comment on whether other limits on itemization, as well as the proposed limits on the number of charges that may be itemized pursuant to proposed § 1026.37(f)(1), should be included in the final rule and, if so, what those limits should be.

In response, commenters generally sought clarification related to where certain charges and credits would be disclosed pursuant to proposed § 1026.37(f)(1). Many of the comments questioned the degree to which the proposal deviated from current regulation, specifically the current instructions for completing a GFE pursuant to appendix C to Regulation X relating to the aggregation of origination charges. Proposed § 1026.37(f)(1) only limited the itemization for charges paid to each creditor and loan origination for originating and extending the credit on the Loan Estimate to thirteen total itemized charges under proposed § 1026.37(f)(1)(ii). Creditors themselves could determine the level of itemization they wished to provide, except that the first itemized charge must be for any charge to reduce the interest rate under proposed § 1026.37(f)(1)(i). The last itemized line could be used to disclose an aggregate of the remaining itemized charges with the label "Additional Charges" when the itemized charges exceeded the thirteen permitted under proposed § 1026.37(f)(6)(i). One large bank commenter sought clarity on "negative discount points," or offsetting credits associated with an interest rate. Under the proposal, only charges would have been disclosed under proposed § 1026.37(f)(1), and lender credits would have been disclosed pursuant to proposed § 1026.37(g)(6). A national trade association commenter queried whether services related to origination, but that were provided by third parties, would be included in the itemization under proposed § 1026.37(f)(1). These charges would have been disclosed pursuant to proposed § 1026.37(f)(2), as services required by the creditor but provided by third parties that the consumer could not shop for unless the creditor does, in fact, permit the consumer to shop for the third-party services, which the Bureau understands would be extremely rare. A GSE commenter stated that the extent of the itemization permitted under § 1026.37(f)(1), especially in relation to the itemization of payments made directly by a consumer to a loan originator, was unclear.

Two GSE commenters stated in comment letters and in an ex parte meeting that the proposal was silent as to how to disclose loan-level pricing adjustments or delivery fees paid by creditors to the GSE commenters, and requested guidance regarding the disclosure of such fees. They stated that the creditor sometimes will require these amounts to be paid upfront by consumers, rather than adjusting the interest rate to be charged in relation to the mortgage loan transaction, and the amounts are disclosed to consumers as third-party charges, discount points, or as an adjustment to the creditor's origination charge. The GSE commenters stated that, under the proposed rule, it would seem that these fees could be disclosed pursuant to proposed § 1026.37(f)(2), but they sought clarification of the location of these charges and stated that there should be consistency among creditors with relation to disclosure of these charges.[273] To the extent that these third-party charges are passed onto the consumer, the loan-level pricing adjustments and delivery fees would be properly disclosed under § 1026.37(f)(1) of the final rule and the Bureau is providing an example in comment 35(f)(1)-5 of the final rule regarding the disclosure of such fees on the Loan Estimate to provide additional clarity.

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[273] The GSE commenters also stated that loan-level pricing adjustments or delivery fees are not viewed as third-party charges under the 2013 ATR Final Rule in relation to the definition of points and fees, rather they are considered as part of the interest rate pricing for the loan. The determination of points and fees is required to determine if a mortgage is considered to be a qualified mortgage pursuant to § 1026.43(e). However, many of the charges that are required to be disclosed under § 1026.37(f) and (g) are not included in the points and fees test for various reasons, including to avoid double-counting of charges in relation to the maximum amount of points and fees for a qualified mortgage. The items listed on the Loan Estimate and Closing Disclosure must also be used for all mortgage loan transactions, not just for qualified mortgages. Therefore, the manner in which the loan-level pricing adjustments or delivery fees are considered in the definition of points and fees under § 1026.32(b)(1), used for § 1026.43(e), is not relevant to how they are disclosed on the Loan Estimate under § 1026.37 or the Closing Disclosure under § 1026.38.

Accordingly, the Bureau is adopting § 1026.37(f)(1) and its accompanying commentary substantially as proposed, except for certain modifications for clarity and consistency with form H-24 of appendix H to Regulation Z. The Bureau is modifying § 1026.37(f)(1)(i) to require that the disclosures required by § 1026.37(f)(1)(i) be left blank if no points are to be charged to the consumer in order to obtain the interest rate disclosed on the Loan Estimate, and is modifying comment 37(f)(1)-5 to indicate expressly the limits to a creditor's discretion to itemize charges under § 1026.37(f)(1). The Bureau believes that requiring that the disclosure of points to be left blank if no points are being charged to the consumer for the interest rate disclosed will reduce the potential of information overload for consumers. In addition, the Bureau is revising § 1026.37(f)(1)(i) to delete references to the points required to be disclosed under that paragraph as being paid by the consumer. The disclosure must reflect the terms of the legal obligation, and if a seller paid points to reduce the interest that the consumer was obligated to pay under the terms of the legal obligation, the disclosure required by § 1026.37(f)(1)(i) is the amount of points the consumer is obligated to pay under the terms of the legal obligation, including those paid by the seller. The seller's payment of the points under a separate contractual agreement with the consumer would be disclosed as a seller's credit under § 1026.37(h), to the extent known by the creditor, consistent with the good faith requirement under § 1026.19(e). *See* comments 17(c)(1)-1 and -3. The Bureau also is revising comment 37(f)(1)-5 to provide additional examples of origination charges, including loan-level pricing adjustments, in response to commenters' requests for additional guidance.

The Bureau is adopting the requirements in § 1026.37(f)(1) pursuant to its implementation authority under TILA section 105(a) and RESPA section 19(a) because disclosure of the points, component charges, and total origination charges will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the requirements in § 1026.37(f)(1). The information disclosed under § 1026.37(f)(1) will enable consumers to understand and negotiate fees, shop for origination services, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby ensuring that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

In adopting § 1026.37(f)(1) substantially as proposed, the Bureau is using its authority under TILA section 105(a) and (f), RESPA section 19(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to exempt transactions subject to § 1026.19(e) from the itemized disclosures required by TILA section 128(a)(18), as added by Dodd-Frank Act section 1419, of the aggregate amount of fees paid to the mortgage originator in connection with the loan, and the amount paid to the mortgage originator by the creditor. In particular, for transactions subject to § 1026.19(e), § 1026.37(f)(1) requires the creditor to disclose the amounts of origination fees paid by the consumer to creditors and loan originators in connection with the loan, but not any amounts received by a loan originator from the creditor. However, as discussed below with respect to § 1026.38(f)(1), the full disclosure required by TILA section 128(a)(18) is included in the disclosure requirements for transactions subject to § 1026.19(f). Accordingly, although certain TILA section 128(a)(18) disclosures are not included in the Loan Estimate, they are included in the Closing Disclosure.

Consistent with Dodd-Frank section 1405(b), disclosure of only the direct charges the consumer will pay will reduce both consumer confusion and the possibility of information overload, improve consumer understanding of the Loan Estimate, and make it easier for creditors or mortgage brokers to complete the estimates of closing costs, which is in the interest of consumers and in the public interest. In addition, consistent with TILA section 105(a) and RESPA section 19(a), the disclosure will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective disclosure of settlement costs by allowing consumers to focus only on the amounts they will pay. Furthermore, consistent with section 1032(a) of the Dodd-Frank Act, § 1026.37(f)(1) will ensure that the origination costs for consumer credit transactions secured by real property 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.

As stated above, § 1026.37(f)(1) is being adopted pursuant to the Bureau's exemption authority under TILA section 105(f) to exempt the creditor from the disclosure of loan originator compensation from the creditor, as required by TILA section 128(a)(18). The Bureau has considered the factors in TILA section 105(f) and determined that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes that the exemption is appropriate for all affected borrowers, 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, 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 or denying important benefits to consumers. Accordingly, the Bureau is exempting the disclosures required pursuant to

§ 1026.19(e) from the requirement in TILA section 128(a)(18) to itemize fees received by loan originators from the creditor.

37(f)(2) Services You Cannot Shop For

Currently, Regulation X provides that third-party services required by the creditor and for which the creditor does not permit the consumer to shop are to be included, as applicable, in Blocks 3 (“Required services that we select”) and 4 (“Title services and lender’s title insurance”) on the RESPA GFE. Regulation X also provides that charges for title services, like charges for origination services, are not itemized on the RESPA GFE, but are disclosed only as a total. *See* appendix C to Regulation X (instructions for Blocks 3, 4 “all fees for title searches, examinations, and endorsements, for example, would be included in this total,” and 6).

Under the Bureau’s proposal, the fees and charges listed under the subheading “Services You Cannot Shop For” pursuant to proposed § 1026.37(f)(2) would have been for services that the creditor requires in connection with the transaction, but that would be provided by persons other than the creditor or mortgage broker. Only items for which the creditor does not permit the consumer to shop in accordance with § 1026.19(e)(1)(vi)(A) would have been listed under this subheading. As discussed above, § 1026.19(e)(3)(ii) would have applied the same criterion in determining whether a creditor is considered to permit the consumer to shop for the particular service.

Pursuant to § 1026.37(f)(2), each item that would have been disclosed under the subheading “Services You Cannot Shop For” must include a descriptive name and the estimated charge, and the creditor must provide a subtotal of all such items. All items for which the charges relate to the provision of title insurance and the handling of the closing would have been required to be identified beginning with “Title –.” The creditor would have been able to use up to 13 lines to itemize charges under the subheading for “Services You Cannot Shop For.”

Proposed comment 37(f)(2)-1 would have cross-referenced comments 19(e)(1)(iv)-1, 19(3)(i)-1, and 19(e)(3)(iv)-1 through -3 for discussions of the factors relevant to determining whether a consumer is permitted to shop and whether a creditor has exercised good faith in providing estimates of charges. Proposed comment 37(f)(2)-2 would have provided examples of the services that might be listed under “Services You Cannot Shop For.” Proposed comment 37(f)(2)-3 would have provided examples of services that would be listed using a phrase beginning with “Title –.” Proposed comment 37(f)(2)-4 would have clarified that the amount listed for the lender’s title insurance coverage is the amount of the premium without any adjustment that might be made for the simultaneous purchase of an owner’s title insurance policy, and cross-referenced comment 37(g)(4)-1 for the disclosure of the premium for owner’s title insurance.

The Bureau sought comment on whether other limits on itemization, in addition to the proposed limits on the number of charges that may be itemized pursuant to § 1026.37(f)(2), should be included in the final rule and, if so, what those limits should be. The Bureau did not receive comments on the information sought by the Bureau, but did receive comments that sought clarification related to where and the manner in which certain charges would be disclosed pursuant to proposed § 1026.37(f)(2). Several national trade association commenters representing real property appraisers, as well as a number of individual appraiser commenters, stated that any charge for an appraisal management company (AMC) should be required to be separately itemized in § 1026.37(f)(2). As noted in the Bureau’s proposal, section 1475 of the Dodd-Frank Act permits the optional disclosure of the charges made by an AMC, but does not require separate itemization. *See* 77 FR 51116, 51134 (August 23, 2012). These commenters stated that the AMC charges should be mandated to be disclosed separately, instead of permitting the creditor to determine whether the AMC charge is disclosed separately. These commenters argued that consumers should be made aware that the amount paid to the appraiser is different than the charge for the appraisal on the disclosure forms. These commenters stated that they believe that the Bureau has the authority to mandate this disclosure. These commenters stated that failure to mandate such disclosure would perpetuate existing practices where consumers are deprived of crucial information that would open up options available to them if they understood the differences in the range of costs of a professional appraisal as well as the range of qualifications and depth of experience of the individuals performing the appraisal, depending on whether the appraisal is or is not ordered through an AMC. It is unclear from these comments, however, that a breakout of the AMC's charge from the appraisal would or could lead to the stated result sought by the commenters: that a consumer would utilize the different charges to question and seek an appraisal directly from an appraiser, rather than through the use of an AMC. The Bureau is not aware of any data or information supporting the commenters' belief that this disclosure would achieve their desired results, nor did the commenters supply any such data or information.

Appraisals are third-party reports prepared for the benefit of the creditor as part of an evaluation of the value of the collateral being secured by the property. RESPA recognizes that creditors are the parties that are obtaining the service, and explicitly provides an exemption from constraints on requiring the use of an affiliate for appraisals. 12 U.S.C. 2607(c). In addition, many of the concerns identified by commenters have been the subject of other rulemakings directly concerning disclosures and information provided to the consumer in relation to appraisals, namely the 2013 ECOA Appraisals Final Rule and the 2013 Interagency Appraisals

Final Rule. *See* 78 FR 7215 (January 31, 2013) and 78 FR 10367 (February 13, 2013). The Bureau believes that, absent data or other information supporting the commenters' beliefs, it would be inappropriate to use its authority to modify the statutory disclosure provision of Dodd-Frank Act section 1475, because requiring breakouts of such charges to be disclosed in all cases may tend to produce information overload.[274]

One national trade association commenter stated that there are some charges that cannot be viewed logically as "shoppable" or "not shoppable" and that they should, rather, be disclosed pursuant to proposed § 1026.37(g). The charges listed were subordination or release fees charged in connection with a prior loan, or fees charged by a homeowner's association, condominium, or co-operative, the provider of which cannot be selected by the consumer. However, the charges discussed by the commenter are not related to other aspects of a residential real estate transaction, such as homeowner's association dues, but rather charges that are being incurred and passed along to the consumer based on services or reports being requested by the creditor during the underwriting process. For example, the referenced subordination charge is the result of a creditor's requirement that the loan being originated receive priority in relation to the loan being subordinated. Thus, the charge is not a result of other services requested or required to be paid by the consumer pursuant to State law or contract, but rather due to the creditor's requirements. Likewise, a charge from a homeowner's association for the service of providing documents and financial reports related to the homeowner's association to the creditor for its review is directly the result of the creditor's requirements, and not based on a service requested by the consumer or required to be paid by the consumer pursuant to State law or

[274] *See* Julie Agnew and Lisa Szykman, "Annuities, Financial Literacy and Information Overload," in *Financial Literacy: Implications for Retirement Security and the Financial Marketplace,* Oxford University Press, 2011, available at http://ssrn.com/abstract=1707659.

contract. If charges from the subordinating lender or the homeowner's association are unrelated to the creditor's requirements to originate the loan, such as outstanding homeowner's dues on the property, they would be disclosed under § 1026.37(g) to the extent they are known to the creditor. For § 1026.37(f)(2), regardless of the identity of the third party, the items disclosed are for charges incurred due to a creditor's requirements for which a consumer cannot select the provider of the service. Charges from a creditor associated with its preparing or negotiating a subordination agreement with a junior lienholder would be disclosed under § 1026.37(f)(1).

As discussed in connection with respect to § 1026.37(f)(1), consumer testing performed on the Loan Estimate indicated that itemization related to improved performance of the participants in understanding both the services provided and the charges imposed for those services. Participants appeared more likely to negotiate fees and shop for services when provided additional details that helped them to understand the nature of the services and the potential value of shopping for a particular service. *See* Kleimann Testing Report at 287-97.

Other commenters stated that other types of lender's title insurance policies, which have rates different from those of the basic lender's title policy premium, should be permitted to be listed on the Loan Estimate. The commenters stated that some creditors will require that the consumer will obtain an "enhanced" lender's title insurance policy. The Bureau believes that flexibility to address the possibility that a lender may require a policy other than a basic lender's title insurance policy is appropriate and is modifying comment 37(f)(2)-4 to address this possibility.

Two GSE commenters in an ex parte communication also stated that the proposal appeared to permit the disclosure of government program funding fees and upfront mortgage insurance charges that were not associated with a specific timeframe of coverage either under proposed § 1026.37(f)(2) or proposed § 1026.37(g)(4). These commenters sought clarification in order for creditors to disclose these items consistently. The Bureau believes that both the government program funding fees and upfront mortgage insurance charges referred to by the two commenters are services that the consumer must pay for and which are required by the creditor in connection with the loan program, and do not correlate to the provisions of § 1026.37(g)(4), as discussed below. Therefore, the Bureau is amending comment 37(f)(2)-2 to include explicitly these charges as examples of charges disclosed pursuant to § 1026.37(f)(2).

Accordingly, the Bureau is adopting § 1026.37(f)(2) and comments 37(f)(2)-1 and -3 as proposed. The Bureau is revising proposed comment 37(f)(2)-2 to reflect additional examples of services disclosed pursuant to § 1026.37(f)(2) to provide greater clarity in light of the comments received. The Bureau is revising proposed comment 37(f)(2)-4 to clarify that the creditor discloses under § 1026.37(f)(2) the premium of the type of lender's title insurance policy that it requires for the loan. The Bureau is adopting the requirements in § 1026.37(f)(2) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of third-party services required by a creditor for consummation of the loan, their component and total charges, and the fact that the creditor will limit the choice of providers for those services will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements in § 1026.37(f)(2). The information disclosed under § 1026.37(f)(2) will enable consumers to understand and negotiate fees, shop for a mortgage loan, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby ensuring that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(f)(3) Services You Can Shop For

Currently, Regulation X provides that third-party services required by the creditor but for which the creditor permits the consumer to shop are to be included, as applicable, in Blocks 4 ("Title services and lender's title insurance") and 6 ("Required services that you can shop for") on the RESPA GFE. Regulation X also provides that charges for title services, like charges for origination services, are not itemized on the RESPA GFE, but are disclosed only as a total. *See* appendix C to Regulation X (instructions for Blocks 3, 4 ("all fees for title searches, examinations, and endorsements, for example, would be included in this total"), and 6).

Under the Bureau's proposal, the fees and charges listed under the subheading "Services You Can Shop For" pursuant to proposed § 1026.37(f)(3) would have been for services that the creditor would require in connection with its decision to make the loan, but that would be provided by persons other than the creditor or mortgage broker. Only items for which the creditor permits the consumer to shop in accordance with § 1026.19(e)(1)(vi)(A) would have been listed under this subheading. Thus, all Loan Costs that are not paid to the creditor or mortgage broker would have been itemized exclusively under either this subheading or the subheading "Services You Cannot Shop For."

As described below in the section-by-section analysis of § 1026.37(f)(5), each item disclosed under the subheading "Services You Can Shop For" would have been required to include a descriptive name and the estimated charge, and the creditor would have been required to provide a subtotal of all such items. All items for which the fees and charges relate to the provision of title insurance and the handling of the closing would have been required to be identified beginning with “Title - .” The creditor would have been able to use up to 14 lines to itemize charges under this subheading.

Proposed comment 37(f)(3)-1 would have provided cross-references to comments 19(e)(3)(ii)-1 through -3, 19(e)(3)(iii)-2, and 19(e)(3)(iv)-1 through -3 for discussions of determining good faith in estimating the costs for required services when the consumer is permitted to choose the provider of those services. Proposed comment 37(f)(3)-2 would have provided examples of the services that might be listed under “Services You Can Shop For.” Proposed comment 37(f)(3)-3 would have provided cross-references to comments 37(f)(2)-3 and -4 for guidance on services that would be labeled beginning with “Title -” and on calculating the amount disclosed for lender’s title insurance, and provided cross-references to comment 37(g)(4)-1 for the disclosure of the premium for owner’s title insurance.

As discussed in connection with proposed § 1026.37(f)(1) and (2), consumer testing performed on Loan Estimate forms indicated that itemization related to improved performance of the participants in understanding both the services charged and the costs of those services. Participants appeared more likely to negotiate fees and shop for services when provided additional details that helped them to understand the nature of the services and the potential value of shopping for a particular service.

The Bureau sought comment on whether other limits on itemization, in addition to the proposed limits on the number of charges that may be itemized pursuant to § 1026.37(f)(3), should be included in the final rule and, if so, what those limits should be. The Bureau did not receive comments concerning the information sought or otherwise related to proposed

§ 1026.37(f)(3).

Accordingly, the Bureau is adopting § 1026.37(f)(3) and its accompanying commentary as proposed. The Bureau is adopting the requirements in § 1026.37(f)(3) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of third-party services required by a creditor for consummation of the loan, their component and total charges, and the fact that the creditor will permit the consumer to choose the providers for those services will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements in § 1026.37(f)(3). The information disclosed under § 1026.37(f)(3) will enable consumers to understand and negotiate fees, shop for a mortgage loan, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby ensuring that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(f)(4) Total Loan Costs

The Bureau's proposed § 1026.37(f)(4) would have required the creditor to disclose, with the label "Total Loan Costs," the sum of the subtotals disclosed under proposed § 1026.37(f)(1) through (3) for Origination Charges, Services You Cannot Shop For, and Services You Can Shop For, respectively. This total would have generally represented all costs that the creditor and mortgage broker impose in connection with the transaction.

Although a comparable total is not required to be stated on the current RESPA GFE, the same costs are included in other subtotals on the RESPA GFE. The Bureau believed that grouping and subtotaling these items in this way would have provided better information to the consumer about costs that are specific to obtaining the mortgage loan from the creditor. Other costs that the consumer may encounter as part of the transfer of ownership of the property are generally related to items and requirements for which the amounts are controlled by other entities or persons, including governmental jurisdictions and the consumer, and were addressed in proposed § 1026.37(g).

The Bureau did not receive comments in relation to proposed § 1026.37(f)(4). Accordingly, the Bureau is adopting § 1026.37(f)(4) as proposed. The Bureau believes that grouping and subtotaling these items in this way will provide better information to the consumer about costs that are specific to obtaining the mortgage loan from the creditor. Other costs that the consumer may encounter as part of the transfer of ownership of the property are generally related to items and requirements for which the amounts are controlled by other entities or persons, including governmental jurisdictions and the consumer, and are addressed in proposed § 1026.37(g). Accordingly, disclosure of this information will promote the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a). It will also ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(f)(5) Item Descriptions and Ordering

The Bureau's proposed § 1026.37(f)(5) would have required the creditor to use terminology that briefly and clearly describes each item disclosed under § 1026.37(f). Except for the item for points that the consumer will pay, which would have been required to be listed as the first item under the subheading "Origination Charges," all items would have been required to be listed in alphabetical order under the applicable subheading. The proposal would have required the creditor to use consistent descriptions and list the charges in the same sequential order on the Closing Disclosure pursuant to proposed § 1026.38(h)(4). The current RESPA GFE and early TILA disclosure do not include a similar requirement. The Bureau believed that a consistent listing of the costs that appear on the Loan Estimate and the Closing Disclosure will facilitate the consumer's comparison of the two disclosure documents and understanding of the transaction as a whole.

Commenters generally did not prefer the requirement to list the items in alphabetical order under the applicable subheading, and instead stated that an alternative method of ordering the items by hard coding the location of each item should be used, similar to how some items are hard coded on the current RESPA settlement statement. Since the descriptions can vary from jurisdiction to jurisdiction and creditor to creditor, while still meeting the requirement that each item be described, there does not appear to be any method to order the items without defining every service provided in residential real estate transactions and requiring a specific description of such service on the disclosures. Some commenters stated that the Bureau should define these services and mandate standard descriptions. However, the Bureau did not propose any such definitions and does not believe it would be appropriate to finalize standard descriptions for real estate settlement services in this final rule. One large bank commenter requested additional clarity on whether abbreviations are permitted under proposed § 1026.37(f)(5). As long as the abbreviation is consistent with the requirements of § 1026.37(f)(5) and the abbreviation describes that item, an abbreviation could be utilized by the creditor in completing the Loan Estimate.

Accordingly, the Bureau is adopting § 1026.37(f)(5) substantially as proposed. The final provision does not contain the proposed requirement to describe the disclosed items briefly and clearly, because the Bureau believes that the clear and conspicuous standard in § 1026.17(a)(1) is sufficient to provide clarity concerning how to describe the items on the Loan Estimate. The Bureau also believes the additional clarity regarding compliance with this requirement would facilitate compliance, satisfying one of the purposes of the integrated disclosures under sections 1098 and 1100A of the Dodd-Frank Act, and thus, is adopting new comment 37(f)(5)-1, which provides guidance regarding the requirement to label items with terminology that describes each item. The Bureau believes that a consistent listing of the costs that appear on the Loan Estimate and the Closing Disclosure will facilitate the consumer's comparison of the two disclosure documents and the consumer's understanding of the transaction as a whole. Accordingly, this requirement will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

37(f)(6) Use of Addenda

The Bureau's proposed § 1026.37(f)(6) would have provided that addenda may not be used to itemize disclosures required by § 1026.37(f)(1) or (2). If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided under § 1026.37(f)(1)(ii) and (f)(2)(ii), the remaining charges would have been required to be disclosed as an aggregate amount in the last line permitted under the applicable paragraph. An addendum would have been permitted to be used to itemize disclosures required by § 1026.37(f)(3), or alternatively a creditor would have been permitted to disclose any remaining charges as an aggregate amount in the last line permitted under § 1026.37(f)(3).

Proposed comment 37(f)(6)-1 would have clarified that a creditor is permitted to provide additional disclosures that are required by State law, as long as those disclosures are provided on a document whose pages are separate from, and are not presented as part of, the disclosures provided in accordance with § 1026.37(f). Proposed comment 37(f)(6)-2 would have provided an example of a label that may be used to reference an addendum as permitted under § 1026.37(f)(6)(ii).

Commenters generally stated that the Loan Estimate did not provide enough lines for entries in the subparagraphs of proposed § 1026.37(f). Examples of additional charges that were provided by commenters included many charges that would be likely disclosed pursuant to proposed § 1026.37(f)(3), which permits the use of an addendum to itemize additional charges, reducing the need for more lines pursuant to the subparagraphs of proposed § 1026.37(f). In addition, the Bureau is concerned about the potential for information overload on the Loan Estimate. *See* Kleimann Testing Report at 7. The Bureau believes that the number of itemized charges permitted under proposed § 1026.37(f) is sufficient to aid consumer understanding of the services required by the creditor to obtain the mortgage loan, and to enable consumer negotiation. In addition, permitting the use of an addendum for services for which the consumer can shop for the service provider enables consumers to shop for and to negotiate the costs and quality of such services. However, because the consumer cannot shop for the services providers for the costs disclosed under § 1026.37(f)(1) and (2), the Bureau believes that it is appropriate, in light of its concern regarding information overload, that those charges in excess of the 13 permitted for each section be disclosed as an aggregate number.

Accordingly, the Bureau is adopting § 1026.37(f)(6) and its accompanying commentary as proposed. The Bureau is adopting the requirements in § 1026.37(f)(6) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because standardization of the information provided on the disclosures required under § 1026.19(e) will provide consistent information that consumers will be able to use to better understand the mortgage transaction, shop for loans, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. This standardization also will ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to more readily understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), which is also a source of authority for the proposed requirements.

37(g) Closing Cost Details; Other Costs

Under section 5(c) of RESPA, lenders must provide applicants for federally related mortgage loans with a good faith estimate of the amount or range of charges for specific settlement services the applicant is likely to incur in connection with the settlement of the loan.

12 U.S.C. 2604(c). Section 1024.7 of Regulation X currently implements this mandate by requiring lenders and mortgage brokers to provide the RESPA GFE, which must be completed in accordance with the instructions in appendix C to Regulation X. Appendix C sets out specific instructions for the information that must be disclosed on the RESPA GFE, including which loan costs must be included and how to identify those costs on the RESPA GFE.

As discussed above, Dodd-Frank Act section 1032(f) requires the Bureau to propose rules to combine these RESPA disclosures with the pre-consummation disclosures required by TILA. In addition to existing TILA disclosure requirements, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to require, in the case of a residential mortgage loan, disclosure of the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. 15 U.S.C. 1638(a)(17).

The Bureau's proposed § 1026.37(g) would have required creditors to disclose as "Other Costs" on the Loan Estimate certain items that are in addition to the Loan Costs that are specifically required by the creditor before consummation of a credit transaction and are disclosed pursuant to § 1026.37(f). The "Other Costs" disclosed pursuant to § 1026.37(g) generally would have been those necessary to complete the real estate closing. These items usually concern payments for governmental requirements, insurance premiums, and items that are charged by parties involved in the property transaction other than the creditor. The creditor would have been required to disclose under four subheadings individual itemized charges, along with subtotals for categories of those itemized charges.

Proposed comment 37(g)-1 would have described the kinds of charges that are disclosed under § 1026.37(g). Proposed comment 37(g)-2 would have clarified that items that are paid at or before closing under the real estate contract are not disclosed on the Loan Estimate, except to the extent the creditor is aware of those charges at the time the Loan Estimate is issued. These items would have been required to be disclosed, however, in the Closing Disclosure pursuant to proposed § 1026.38(f), (g), (j) and (k).

The Bureau did not receive comments on proposed § 1026.37(g) in general, but did receive comments concerning the specific items disclosed pursuant to the subparagraphs of § 1026.37(g), which are discussed below. Accordingly, the Bureau is adopting § 1026.37(g) and its accompanying commentary generally as proposed, except to the extent that modifications are made to the subparagraphs and accompanying commentary, as described below.

Pursuant to its authority under Dodd-Frank Act section 1032(f), TILA section 105(a), and RESPA section 19(a), the Bureau is requiring creditors to disclose the loan costs and other costs imposed upon the consumer in tables as part of the integrated Loan Estimate. Section 1026.37(f) and (g) implement the early disclosure requirements in TILA and RESPA by requiring disclosure of costs associated with the consumer credit transaction, including loan costs and other costs. Based on its consumer testing, the Bureau believes that early disclosure of estimated loan costs and other costs, as set forth in § 1026.37(f) and (g), will improve consumer understanding of the credit and property transactions. *See* Kleimann Testing Report at 277-80, Kleimann Post-Proposal Testing Report at 71, Kleimann Quantitative Study at 51-52. The Bureau believes that these disclosures will effectuate the purpose of TILA by promoting the informed use of credit and assuring a meaningful disclosure to consumers. The Bureau believes that the disclosures also will satisfy the RESPA requirement to provide a consumer with a good faith estimate of the amount or range of charges for specific settlement services the consumer is likely to incur in connection with the closing. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for § 1026.37(f) and (g). These disclosures will ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

As discussed in more detail below in the section-by-section analysis of § 1026.37(g)(5) and (6), the final rule requires creditors to disclose under the heading "Other Costs" the totals of other costs, the total of loan costs plus other costs, lender credits, and the total closing costs. Consumer feedback from the Bureau's consumer testing indicated that clear amounts for the total costs of the loan and real estate closing were also important to consumers' understanding of the complete transaction. In general, all of these charges are currently required to be disclosed—as itemized or aggregate charges and amounts—on the RESPA GFE, the RESPA settlement statement, or both. Combining these charges and totals into the disclosures required by § 1026.19(e) will enable consumers to understand the services and charges related to the credit and real estate transactions, shop for the settlement services in connection with the transaction, and more easily compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby ensuring that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

37(g)(1) Taxes and Other Government Fees

The Bureau’s proposed § 1026.37(g)(1) would have required the disclosure of taxes and other government fees for recording of documents and transfer taxes assessed against the purchase price of a real estate contract or the loan amount under the subheading “Taxes and Other Government Fees.” Proposed § 1026.37(g)(1)(i) would have required the disclosure of the sums of all recording fees and other government fees and taxes, except transfer taxes, using the label “Recording Fees and Other Taxes.” Proposed § 1026.37(g)(1)(ii) would have required the disclosure of the sum of all transfer taxes using the label “Transfer Taxes.”

Proposed comment 37(g)(1)-1 would have clarified that recording fees are assessed by a government authority in order to record and index documents related to property transfers under State or local law. Proposed comment 37(g)(1)-2 would have clarified that government charges that are not transfer taxes are disclosed with recording fees under § 1026.37(g)(1)(i). Proposed comment 37(g)(1)-3 would have explained that, in general, transfer taxes are State and local government fees on mortgages and home sales that are based on the loan amount or sales price. Proposed comment 37(g)(1)-4 would have clarified that the only transfer taxes disclosed under § 1026.37(g)(1) are transfer taxes imposed on the consumer, as determined under State or local law, and that if unpaid transfer taxes can result in a lien being placed on the property of the consumer, the transfer tax is disclosed under § 1026.37(g)(1). The comment further clarifies that if State or local law is unclear, or does not specifically attribute the transfer tax, the creditor may use common practice in the locality of the property to apportion the amount of the transfer tax disclosed as paid by the consumer under § 1026.37(g)(1). Proposed comment 37(g)(1)-5 would have explained that although transfer taxes paid by the seller in a purchase transaction are not disclosed pursuant to § 1026.37(g), they are disclosed on the Closing Disclosure under § 1026.38(g)(1)(ii). Proposed comment 37(g)(1)-6 would have clarified that the lines and labels required under § 1026.37(g)(1) may not be deleted, and that additional items may not be listed under the subheading.

Commenters specifically provided information on the disclosure of transfer taxes. Two national industry trade associations stated that the allocation of transfer taxes between a consumer and a seller can vary based on State law and local custom, and that applicable laws often permit the consumer and seller to allocate the payment of transfer taxes between themselves during the real estate settlement process through negotiation and modification of their contract. The commenters stated that this could lead to differing approaches by creditors. These commenters raised a concern that many creditors would disclose transfer taxes if the consumer could possibly pay them, while less risk-adverse creditors would not disclose these transfer taxes. The commenters stated that this could make it more difficult to comparison shop, since the amount paid by the consumer at closing will depend on negotiations between the consumer and seller, which may change at any time prior to consummation. Thus, the commenters stated that it would be preferable to disclose always the transfer taxes if the consumer possibly could pay them, and if the real estate sales contract later confirms that the seller has agreed to pay some or all of those taxes, a revised disclosure can be provided under § 1026.19(e)(3)(iv).

Other industry commenters suggested that the method of disclosure of transfer taxes required under the current Regulation X on the RESPA GFE should be used, without any discussion of how that would differ from proposed § 1026.37(g)(1). One industry commenter suggested deleting the example in proposed comment 37(g)(1)-4 of State law attaching a lien on the consumer's acquired property if the transfer tax is not paid, as an example of a situation where the State law places responsibility on the consumer to pay the transfer tax.

The Bureau believes that the effect of proposed § 1026.37(g)(1) would have been to require creditors to disclose the amount of transfer taxes for which the consumer is liable, either from State or local law, or the real estate sales contract. Only if State or local law were unclear would common practice be used by creditors to determine the amounts to be disclosed. The Bureau believes this result is appropriate, because RESPA section 5(c) requires disclosure of good faith estimates of the charges "the borrower is likely to incur in connection with the settlement . . . ." 12 U.S.C. 2604(c). If State or local law, or the real estate contract is unclear, the Bureau believes the common practice in the locality of the property is an appropriate measure of the charge the consumer is likely to pay.

Accordingly, the Bureau is adopting § 1026.37(g)(1) and its accompanying commentary as proposed, except with a minor modification to require the amounts not charged to be left blank instead of disclosed as a zero dollar amount, to reduce the amount of numbers on the page and the potential for information overload. The Bureau is adopting the requirements in § 1026.37(g)(1) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of taxes and government fees required to be paid in the real estate closing will educate consumers about costs they must be prepared to pay in the transaction, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the requirements in § 1026.37(g)(1). This information also ensures that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(2) Prepaids

The Bureau's proposed § 1026.37(g)(2) would have required the disclosure under the subheading "Prepaids" of prepaid charges for real estate property taxes, insurance premiums, and other items that must be paid to insure the property or satisfy real estate tax obligations, as well as other charges that must be satisfied before consummation of the credit transaction and the real estate closing. Proposed § 1026.37(g)(2) also would have prescribed some of the items, and additional information about those items, that must be included under the subheading "Prepaids." Proposed § 1026.37(g)(2)(i)-(iv) would have required the first four items to be disclosed with the labels of "Homeowner's Insurance Premium (___months)," "Mortgage Insurance Premium (___months)," "Prepaid Interest (_____ per day for ____ days @ ____%)," and "Property Taxes," respectively, together with the corresponding total dollar amount to be paid.

Proposed comment 37(g)(2)-1 would have provided examples of other periodic charges that are required to be paid at consummation and are disclosed under § 1026.37(g)(2). Proposed comment 37(g)(2)-2 would have clarified that the interest rate disclosed under § 1026.37(g)(2)(iii) is the same interest rate that is disclosed under § 1026.37(b)(2). Proposed comment 37(g)(2)-3 would have clarified that the terms "property taxes," "homeowner's insurance," and "mortgage insurance" have the same meaning as those terms are used under § 1026.37(c) and its commentary. Proposed comment 37(g)(2)-4 would have clarified that the lines and labels required under § 1026.37(g)(2) may not be deleted.

Commenters stated that the subheading "Prepaids" could be confusing to consumers. Specifically, they were concerned that consumers could confuse the items disclosed under the subheading required by proposed § 1026.37(g)(2) with items included as the prepaid finance charge in the calculation of the finance charge and the APR under TILA. Prior studies conducted by other Federal agencies as well as consumer testing conducted by the Bureau, however, indicate that consumers do not readily understand the disclosures of the finance charge and APR on the current disclosures required under TILA or on some of the early prototypes of the integrated disclosures. *See* Board-HUD Joint Report at 10; Board's 2009 Closed-End Proposal, 74 FR 43232, 43296-97; Kleimann Testing Report at 61, 84, 101. The Bureau does not believe that consumers will confuse the items charged pursuant to § 1026.37(g)(2) with the regulatory defined term finance charge, prepaid finance charge, or APR.

Several industry and national trade group commenters stated that the requirement to disclose any prepaid interest based on a fully-indexed rate pursuant to proposed § 1026.37(g)(2)(iii) would result in the amount disclosed to be inaccurate for all adjustable rate mortgages, in some cases too high and in others too low. Instead, they stated that the initial interest rate should be used instead of the fully-indexed rate for the amount of prepaid interest pursuant to proposed § 1026.37(g)(2)(iii). Several commenters were confused regarding the requirement to disclose the initial interest rate under proposed § 1026.37(b)(2). As discussed in the section-by-section analysis for proposed § 1026.37(b)(2), that provision would have required disclosure of the fully-indexed interest rate, if applicable, only if the initial interest rate were not known at consummation for an adjustable rate loan. Accordingly, proposed § 1026.37(g)(2)(iii) would have required the prepaid interest disclosure to be based on an introductory interest rate if one applied to the transaction in an adjustable rate loan. Several commenters, in response to § 1026.37(g)(2) as well as §§ 1026.37(g)(3) and 1026.38(g)(2) and (3), stated that the terms "mortgage insurance," "homeowner's insurance," and "property taxes" were unclear and that creditors may have difficulty in properly disclosing these amounts due to a general reference to other sections of the proposed rule.

Accordingly, the Bureau is adopting § 1026.37(g)(2) and comments 37(g)(2)-1, -2, and -4 as proposed. The Bureau is not modifying comment 37(g)(2)-2 because the Bureau is modifying § 1026.37(b)(2) to provide greater clarity regarding the interest rate to be disclosed. Comment 37(g)(2)-3 is being modified to provide more precise references to definitions of the terms "mortgage insurance," "homeowner's insurance," and "property taxes" in response to commenters' requests for more precise definitions.

The Bureau is adopting the requirements in § 1026.37(g)(2) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of charges that must be satisfied as part of the mortgage transaction will educate consumers about costs they must be prepared to pay, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for this requirement. This information ensures that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(3) Initial Escrow Payment at Closing

Disclosure of the initial payment for the establishment of an escrow account currently is required under §§ 1024.7 and 1024.17 of Regulation X, and the items and amounts must be disclosed in Block 9 of the RESPA GFE. The Bureau's proposed § 1026.37(g)(3) would have required the disclosure of the initial payments to establish an escrow account to pay for future recurring charges. Proposed § 1026.37(g)(3) also would have prescribed some of the items, and additional information about those items, that must be included under the subheading “Initial Escrow Payment at Closing.”

Proposed comment 37(g)(3)-1 would have clarified that, for any item required to be listed that is not charged to the consumer, the monthly payment amount and time period may be left blank, but the dollar amount for the item must be shown as zero. Proposed comment 37(g)(3)-2 would have clarified that the aggregate escrow account adjustment required for the RESPA settlement statement under Regulation X § 1024.17(d)(2) is not included on the Loan Estimate, but is included on the Closing Disclosure under § 1026.38(g)(3). Proposed comment 38(g)(3)-3 would have clarified that “property taxes,” “homeowner’s insurance,” and “mortgage insurance” have the same meaning as those terms are used under § 1026.37(c) and its commentary. Proposed comment 37(g)(3)-4 would have clarified that the lines and labels required under § 1026.37(g)(3) may not be deleted.

Very few commenters provided comments on this subparagraph. A large bank commenter requested more clarity of when an amount is disclosed as prepaid under § 1026.37(g)(2) versus when it would be included under § 1026.37(g)(3), since the initial escrow payment will also be made in advance of the first payment due, as are prepaids under § 1026.37(g)(2). However, prepaids are payments made to the entity that imposes the charge, such as county governments for county-imposed real estate property taxes. The initial escrow payment to be made at closing pursuant to § 1026.37(g)(3) would be for payments made to the creditor, or its successor in interest, to establish an escrow or impound account for future payment of such charges pursuant to Regulation X in § 1024.17. A document preparation/software commenter stated that it believed that not enough lines were provided for the initial escrow account disclosure. However, the commenter did not provide any further reasons why three preprinted lines for the most common charges included in an escrow account: homeowner's insurance, mortgage insurance, and property taxes, together with five additional permissible lines for other charges included in an escrow or impound account, would be insufficient. The commenter also seemed to be under the impression that only three items were permitted to be disclosed under § 1026.37(g)(3), which does not take into account the five additional lines permitted under § 1026.37(g)(3)(v).

Another document preparation/software commenter stated that the aggregate adjustment required under Regulation X in § 1024.17(d)(2) also should be disclosed pursuant to § 1026.37(g)(3). However, the requirements of Regulation X in § 1024.17(d)(2) presuppose knowledge about the timing and amount of payments that may not be known to and verified by the creditor when the Loan Estimate is issued. An industry commenter stated that some jurisdictions have multiple taxes assessed against real property. In some cases, the commenter stated the dates of these taxes cover differing dates and are due at different times. The commenter stated that the proper way to address these occurrences would be to itemize the taxes separately pursuant to proposed § 1026.37(g)(3)(v). The Bureau acknowledges this issue and believes a separate itemization for taxes assessed for different periods would be necessary to perform an initial escrow account analysis pursuant to Regulation X § 1024.17(c)(2). The Bureau believes that proposed § 1026.37(g)(3) permits this itemization. However, for additional clarity, comment 37(g)(3)-5 is revised to explain expressly that this practice is permitted. Several commenters, in response to § 1026.37(g)(3) as well as §§ 1026.37(g)(2) and 1026.38(g)(2) and (3), stated that the terms "mortgage insurance," "homeowner's insurance," and “property taxes” were unclear and that creditors may have difficulty in properly disclosing these amounts due to a general reference to other sections of the proposed rule.

Accordingly, the Bureau is adopting § 1026.37(g)(3) and its comments 37(g)(3)-1, -2 and -4 as proposed, except with a minor modification to require the amount not charged to be left blank instead of disclosed as a zero dollar amount, to reduce the amount of numbers on the page. The Bureau is adopting comment 37(g)(3)-3 with modifications to provide more precise references to definitions of the terms “mortgage insurance,” “homeowner’s insurance,” and “property taxes” in response to commenters’ requests for more precise definitions. In addition, the Bureau is adopting comment 37(g)(3)-5, which clarifies that, when more than one tax is assessed on the real property that secures the loan and the taxes are not paid at the same time, the additional property tax may be separately itemized under § 1026.37(g)(3), in accordance with § 1024.17, as applicable.

The Bureau is adopting the requirements in § 1026.37(g)(3) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of initial payments that consumers are required to make to establish escrow accounts for future recurring charges will educate consumers about costs they must be prepared to pay in the mortgage transaction, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements. This information ensures that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(4) Other

Currently, the only other disclosure required by Regulation X for closing costs not addressed under proposed § 1026.37(f) and (g)(1), (2), or (3) would be a disclosure for an owner's title insurance policy under the instructions in appendix C for Block 5. The Bureau's proposed § 1026.37(g)(4) would have required the disclosure of any other items that the consumer has become legally obligated to pay in connection with the transaction, to the extent that the existence of these items is known by the creditor at the time the Loan Estimate is issued. The label for any item that is a component of title insurance would have required the inclusion of the description "Title – " at the beginning. The label for all items for which the amounts disclosed are premiums for separate optional insurance, warranty, guarantee, or event-coverage products would have required the inclusion of the parenthetical "(optional)" at the end. The items that would have been disclosed under proposed § 1026.37(g)(4) are not required by the creditor. These items would not have included additional coverage or endorsements added to products required by the creditor. Accordingly, they would not have been disclosed under other paragraphs of proposed § 1026.37(f) or (g) and are disclosed under the subheading "Other." These items are voluntary products that the consumer may be likely or may have already elected to purchase, and of which the creditor knows or is aware.

Proposed comment 37(g)(4)-1 would have clarified that any owner's title insurance policy premium disclosed under § 1026.37(g)(4) is based on a basic rate, and not an "enhanced" premium. Proposed comment 37(g)(4)-1 would have provided an example of a label for owner's title insurance and would have cross-referenced comment 37(f)(2)-4 for disclosure of the premium for lender’s title insurance. Proposed comment 37(g)(4)-2 would have clarified that any title insurance policy disclosed on the Loan Estimate based on a simultaneous issuance calculation must be disclosed by adding the full owner’s title insurance premium plus the simultaneous issuance premium, and then deducting the amount of the lender’s title insurance at the full premium rate. Proposed comment 37(g)(4)-3 would have provided examples of products to which the description “(optional)” applies and cross-referenced comments 4(b)(7) and (b)(8)-1 through -3 and comments 4(b)(10)-1 and -2 for descriptions and guidance concerning disclosure of premiums for credit life, debt suspension, and debt cancellation coverage. Proposed comment 37(g)(4)-4 would have provided examples of other items that are disclosed under § 1026.37(g)(4) if known by the creditor at the time the Loan Estimate is issued and would have referred to comment 19(e)(3)(iii)-3 concerning application of the good faith requirement for services that are not required by the creditor.

Notation of an Owner’s Title Insurance Policy Premium as “(optional)”

Many industry commenters stated that the disclosure under § 1026.37(g)(4) and § 1026.38(g)(4) of owner’s title insurance premiums should not contain the notation “(optional)” and provided several reasons. Many stated that HUD and State governments have generally determined that an owner’s title insurance policy is beneficial to the consumer. Others also stated that the notation may be confusing to consumers, and may even encourage consumers to forego obtaining an owner’s title insurance policy and instead mistakenly rely on the lender’s title insurance policy to provide coverage to the consumer. A law firm commenter stated that the owner’s title insurance policy is the only product disclosed on the Loan Estimate that provides insurance for a consumer’s interest in the real property. One commenter stated that the notation may require settlement agents to provide legal advice about the optional nature of an owner’s title insurance policy, possibly in contravention of State laws related to the unauthorized practice of law.

One credit union commenter supported the notation. One State trade association commenter suggested that the owner's title insurance premium should be required to be disclosed on the Loan Estimate only when a creditor requires a consumer to obtain it. Another industry commenter indicated that the proposed notation of "(optional)" was preferable to "(not recommended)." Commenters did suggest alternatives to the "(optional)" notation, which included "(recommended)" or "(optional – decline at your own risk)." These suggested alternatives were only submitted with respect to the owner's title insurance premium, and not other optional insurance products.

Based on these comments, in particular the comment by the State trade association suggesting that owner's title insurance be disclosed when required by the creditor, the Bureau considered removing any requirement to disclose a non-required owner's title insurance premium on the Loan Estimate for purchase transactions rather than merely revising the proposed notation associated with the owner's title insurance premium. This, however, would remove a sizeable cost from the Loan Estimate that a consumer may be likely to pay and thereby reduce the accuracy of the Loan Estimate. Additionally, if not disclosed on the Loan Estimate, the cost of an owner's title insurance policy would not be subject to any tolerance level under § 1026.19(e)(3), making the consumer protections related to the tolerance levels in applicable to a charge that frequently is a large dollar amount. Accordingly, the Bureau concludes that the owner's title insurance premium should be disclosed on the Loan Estimate in a purchase transaction if a consumer is likely to pay for it, regardless of whether the policy is required by the creditor.

Many commenters opposed to the proposed "(optional)" designation for the owner's title insurance premium were concerned that the "(optional)" designation is a signal to consumers that they do not need the service, and can safely reduce costs by declining the service. Commenters seemed to have assumed that the only information that consumers receive when obtaining a purchase money mortgage loan is the Loan Estimate. However, this view does not take into account the myriad sources of information related to the purchase of residential real estate. Other information, such as the special information booklet under § 1026.19(g) of this final rule, State disclosure requirements,[275] and marketing materials from title insurance agents and underwriters, all will provide consumers with additional information concerning an owner's title insurance policy that can lead a consumer to choose to obtain this insurance product. The rule only requires the "(optional)" designation for the purpose of informing the consumer that the creditor is not requiring that particular service, distinguishing such from the services required by the creditor under § 1026.37(f) and (g). Providing a stronger signal to consumers, whether by a notation of "(recommended)" or "(decline at your own risk)" would essentially amount to the Loan Estimate marketing this product to the consumer. However, the Bureau believes that the consumer should make a decision to obtain owner's title insurance coverage based on available information, and that an informed consumer should decide whether it is in his or her best interest. Accordingly, the Bureau is finalizing this aspect of the regulation as proposed.

Disclosing Title Insurance Policies Issued Simultaneously

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[275] Twenty-two States have disclosure requirements with respect to an owner's title insurance policy. *See*, *e.g.*, Ala. Code § 27-25-7; Ark. Code Ann. § 23-103-413; Cal. Civ. § 1057.6; Conn. Gen. Stat. § 38A-423; D.C. Code § 31-5031.12*;* Fla. Stat. Ann. § 627.798; La. Rev. Stat. Ann. § 22:531; Md. Code Ann., Ins. § 22-102; Mo. Ann. Stat. § 381.015; Mont. Code Ann. § 33-25-216; Neb. Rev. Stat. § 44-1992; Nev. Rev. Stat. Ann. § 692A-210; N.M Admin. Code tit. 13, § 13.14.7.8; N.Y. Real Property Law Journal, Winter 2009, Vol. 37, No. 1, at page 42; Ohio Rev. Code Ann. § 3953.30; 31 Pa. Code § 126.1; R.I. Gen. Laws Ann. § 27-2.6-12; S.C. Code Ann. Regs. 69-18(2)(B)(1)(I); Tenn. Code Ann. § 56-35-133; Tex. Ins. Code Ann. §§ 2704.051 and 2704.052; Va. Code Ann. § 38.2-4616; Wyo. Stat. Ann. § 26-23-331.

A number of commenters objected to proposed comment 37(g)(4)-2, which would have clarified that any title insurance policy disclosed on the Loan Estimate based on a simultaneous issuance calculation must be disclosed by adding the full owner's title insurance premium plus the simultaneous issuance premium for lender's title insurance coverage, and then deducting the amount of a full premium rate for lender's title insurance coverage that would be charged in a transaction when a consumer declines the purchase of an owner's title insurance policy. The commenters generally raised concerns that this manner of disclosing the title insurance premiums would produce consumer confusion, as the amounts disclosed on the Loan Estimate would not correlate to the title insurance rates quoted by title insurance agents in accordance with State law or the common practice in a particular geographic area. However, as discussed below, the manner in which the simultaneous issuance calculation is made in some States can result in confusion to the consumer. If the simultaneous issuance calculations are disclosed, the amount disclosed for a lender's title insurance policy would be negligible or zero. In an instance where the consumer declines an owner's title insurance policy, the lender's title insurance policy premium can increase substantially, resulting in a higher total amount of closing costs than can be anticipated by the consumer. Consumers may thus be led to believe that the *incremental* cost of the owner's title insurance is much higher than disclosed on the Loan Estimate.

A national trade association commenter representing abstractors, title insurance agents, and title insurance underwriters stated that the proposed calculation methodology when a simultaneous issuance rate is utilized to calculate the owner's title insurance and lender's title insurance premiums would violate some State laws. Commenters recommended that title insurance policies should be disclosed on the Loan Estimate only in accordance with how they are to be quoted by title insurance agents pursuant to State law. A State trade association commenter stated that the amounts quoted should be in accordance with the purchase and sale agreement between the consumer and seller or common practice in a particular geographic area. A title insurance company commenter stated that there should be two Loan Estimate disclosures, one with the owner's title insurance policy and lender's title insurance policy simultaneous rates, and one with only the lender's title insurance policy rate.

Commenters' concerns related to the calculation of the owner's title insurance and lender's title insurance premiums under the proposed rule generally were that the calculation would not accord with State law or custom, leading to confusion for consumers, settlement agents, internal auditors, and State auditors. State laws may prohibit a title agent from quoting the costs in a manner different than ones prescribed by State law. However, the manners prescribed by State law vary based on differing State regulatory models as well as differing pricing systems employed by title insurance underwriters, sometimes in the same State. These differences can prevent the disclosure of those prices in a manner that can be readily understood by consumers, especially when the consumer obtains more than one Loan Estimate from different creditors to shop for mortgage loans in States where the pricing systems differ between title insurance underwriters.

The use of State law and custom introduces two issues. Ten States do not regulate, in any fashion, the rates charged for title insurance. A review of three title insurance underwriters[276] in these States indicates that there is no standard calculation method used, which also appears to be

[276] The rates of three title insurance underwriters reviewed were from associated families of title insurance underwriters associated with Fidelity National Financial, First American Title Insurance Company, and Old Republic Title Insurance Company. These families of companies underwrote 73.73 percent of the total coverage amount of title insurance policies issued in the United States in 2012. *See* American Land Title Association, 2012 Market Share Data, available at: http://www.alta.org/industry/12-04/2012_MarketShare_Family-CompanySummary.xls. The title insurance policy rates were found at http://www.oldrepublictitle.com/newnational/resources/locations.asp, http://tfc.firstam.com/Calculator, and http://ratecalculator.fnf.com/.

the case in approximately 14 States that regulate title insurance. In some States, each underwriter uses a different method to calculate the owner's title insurance and lender's title insurance premiums. Accordingly, there is no verifiable way to determine the cost of either the owner's title insurance or lender's title insurance in these jurisdictions other than from the information provided by the underwriters themselves. Second, approximately 26 States, either by promulgated rates or by rates created and used by title underwriters, calculate the cost of lender's title insurance policy differently when a simultaneous owner's title insurance policy is issued.[277] A standard rate applies to the lender's title insurance policy when purchased alone, but is only an additional flat cost when an owner's title insurance policy is issued simultaneously. When a consumer only obtains a lender's title insurance policy, there are changes to two separately disclosed title insurance premiums that are used to determine the amounts disclosed on the Loan Estimate. This results in a potential aggregate decrease in settlement costs when a consumer declines to purchase an owner's title insurance policy, but it may appear to a consumer as an increase in the cost a lender's title insurance policy.[278]

Title insurance is governed by the individual States, which can regulate the providers of insurance products. As noted above, there is a great range of State regulations and pricing models in relation to title insurance. However, this final rule mandates the disclosures made by

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[277] The other manners in which title insurance rates are calculated include a proportional discount on both policy premiums, rates that do not include simultaneous issuance calculations, no additional premium for a lender's title insurance policy when an owner's title insurance policy is issued, and no additional premium for an owner's title insurance policy when a lender's title insurance policy is issued.

[278] While the aggregate amount paid for title insurance premiums would decrease when an owner's title policy is not purchased, the amount charged for the lender's title insurance can increase substantially from the amount disclosed when a simultaneous issuance rate is used. As an example, the lender's title insurance premium would increase by an amount between $15 and $1,455 in a transaction with a purchase price of $240,000 and with a purchase money loan of $211,000. These amounts assume that the title insurance policies obtained would be standard ALTA Loan and Owner policies without endorsements (or jurisdictional equivalents), excluding any applicable taxes and fees or other discounts. The amounts were determined by a review of publicly available title insurance rates from national title insurance underwriters, found at http://www.oldrepublictitle.com/newnational/resources/locations.asp, http://tfc.firstam.com/Calculator, and http://ratecalculator.fnf.com/.

creditors to consumers pursuant to TILA. Thus, the commenters' points related to State law prohibitions and regulation of insurance are inapposite in a situation where the party providing the Loan Estimate, the creditor, is not subject to the legal requirements of State insurance laws. *See* McCarran-Ferguson Act, 15 U.S.C. § 1012(b). The Bureau believes that a standard method of disclosing lender's and owner's title insurance premium amounts on the Loan Estimate under Regulation Z that shows consumers the incremental cost of purchasing an owner's title insurance policy in addition to a lender's title insurance policy will aid consumer understanding of the transaction, which is one of the purposes of the integrated disclosures set for by the Dodd-Frank Act in TILA and RESPA. *See* Dodd-Frank Act sections 1098 and 1100A.

To address these issues, proposed § 1026.37(g)(4) and its accompanying commentary would have required the calculation of owner's title insurance and lender's title insurance premiums to ensure that the lender's title insurance premium would not increase if the consumer declined an owner's title insurance premium. The calculation would have required that the lender's title insurance premium be disclosed at its full rate, and the owner's title insurance premium be disclosed as the difference between the owner's title insurance premium plus any additional flat simultaneous issuance rate, and the disclosed lender's title insurance premium.

For approximately 25 States,[279] this calculation methodology would result in disclosure of owner's title insurance and lender's title insurance premiums that would not be in accordance with the actual pricing; that is, the owner's title insurance and lender's title insurance premiums listed on the integrated disclosures always would be different than the actual rates charged. However, the calculation would result in providing every consumer in the United States with an

[279] Maryland requires that title insurance agents provide a disclosure of the owner's title insurance premium and the lender's title insurance premium consistent with the manner that would have been mandated by proposed comment 37(g)(4)-2. *See* Md. Code Ann., Ins. § 22-102.

accurate reflection of the *incremental* additional cost associated with obtaining an owner's title insurance policy at consummation. With this disclosure, consumers can determine if the additional cost for insurance to protect themselves from losses that result from a title defect and to provide a legal defense from challenges to their legal ownership of the property they are acquiring would be appropriate. There is no indication on the Loan Estimate that the owner's title insurance premium disclosed is an incremental cost to the consumer, and not the full rate. However, the creditor can communicate to those consumers who are confused that the total amount of the title insurance premiums shown on the Loan Estimate are the same as the total amount of the title insurance premiums calculated under State law or common practice that are disclosed or advertised by title underwriters and title agents.

The Bureau finds that the clear disclosure of the required cost for the lender's title insurance alone, and the additional incremental cost to be paid by the consumer for the optional owner's title insurance premium outweighs the benefit of a technical disclosure of the owner's and lender's title insurance premiums; such a technical disclosure can result in confusion about what the consumer actually may pay if the consumer does not obtain an owner's title insurance policy, as well as removing any need to provide two Loan Estimates, as one commenter suggested. The Bureau intends to address issues surrounding title insurance, including the differing technical manners in which title insurance premiums are calculated, as part of updates to the special information booklet prescribed by RESPA that the Bureau intends to revise prior to the effective date of this final rule. See the section-by-section analysis of § 1026.19(g) for more information about the special information booklet. The Bureau also may provide additional guidance to consumers about the nature of title insurance, its potential benefits and costs, and the manner in which premiums are calculated in other ways as part of its ongoing efforts to empower consumers to make financial choices that are in their best short- and long-term interests.

Other commenters stated that other types of owner's title insurance policies, which have rates different from those of the basic owner's title policy premium, should be permitted to be listed on the Loan Estimate. The commenters stated that some real estate sales contracts will designate that the consumer or seller will obtain an "enhanced" owner's title insurance policy. The Bureau believes that more flexibility to address the variation of residential real estate contracts is appropriate and is revising comment 37(g)(4)-1 to address this possibility.

Final Rule

Accordingly, the Bureau is adopting § 1026.37(g)(4) and its comments 37(g)(4)-2, -3, and -4 as proposed. Comment 37(g)(4)-1 is being modified to permit the disclosure of an "enhanced" owner's title insurance policy premium when the creditor knows that an "enhanced" owner's title insurance policy is required by the real estate sales contract. The Bureau is adopting the requirements in § 1026.37(g)(4) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of payments that consumers are likely to pay in a mortgage transaction will educate consumers about costs they must be prepared to pay at closing, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for this requirement. This information ensures that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(5) Total Other Costs

The Bureau's proposed § 1026.37(g)(5) would have required disclosure under the subheading "Total Other Costs" of the sum of the subtotals disclosed pursuant to § 1026.37(g)(1) through (g)(4). The Bureau did not receive comments related to proposed § 1026.37(g)(5). Accordingly, the Bureau is adopting § 1026.37(g)(5) as proposed. The Bureau is adopting the requirements in § 1026.37(g)(5) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of the total of the charges consumers must pay, in addition to charges for consummating the loan, will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for this requirement. This information ensures that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(6) Total Closing Costs

The Bureau's proposed § 1026.37(g)(6) would have required the disclosure under the subheading "Total Closing Costs" of a subtotal of the items disclosed as "Total Loan Costs" and "Total Other Costs" pursuant to § 1026.37(f)(4) and (g)(5); the amount of any generalized lender credits to be provided at consummation, stated as a negative number; and the sum of the subtotal of loan and other costs and the negative amount of lender credits. Proposed comment

37(g)(6)(ii)-1 would have clarified that generalized lender credits not associated with a particular service are disclosed under § 1026.37(g)(6)(ii), but lender credits for specific items disclosed on the Loan Estimate are disclosed as paid by others on the Closing Disclosure under § 1026.38(f) and (g), as applicable.

Commenters had varying suggestions related to how to show lender credits on the Loan Estimate. One large bank commenter, along with other commenters, stated that these lender credits should be able to be itemized on the Loan Estimate, to indicate which charge under § 1026.37(f) and (g) would be offset by the lender credit. Other commenters suggested that the lender credits should offset the total of the loan costs disclosed under § 1026.37(f). A regional trade association commenter stated that there is no value in disclosing a cost and then providing an offsetting credit for the same amount if the creditor intends to cover the entire cost of the service. Rather, the regional trade association commenter stated it would be better if the charge for that service was omitted from the items disclosed under § 1026.37(f) or (g). A different State trade association stated that the disclosure of lender credits is much improved under § 1026.37. Some commenters questioned how what they described as "no-cost" loans, referring to loans for which the creditor provides a general credit to offset closing costs (which is typically recouped by the creditor with a higher interest rate), should be disclosed.

The disclosure of lender credits on the Loan Estimate points to a tension between having an accurate and comprehensive disclosure of the costs associated with the extension of credit and the fact that the Loan Estimate is disclosed early enough in the real estate settlement process that the exact extent of the services required, and services that may not be required, is not completely known by the creditor at the time the Loan Estimate is issued. To merely ignore services that are most likely going to be obtained if a creditor intends to pay for the service would be an unreliable standard for a consumer. Information regarding the services for which the consumer will be likely to pay, either directly or through a higher interest rate, may be useful to consumers when comparison shopping or understanding the nature of the mortgage loan transaction. The lack of specific credits on the Loan Estimate also facilitates comparison shopping, since a consumer would have to analyze the extent that specific credits are being utilized by the creditor to offset charges in the aggregate. Allowing specific credits on the Loan Estimate also could lead creditors to include charges with an offsetting credit even when the creditor does not require a specific service, increasing information overload and reducing the ability of consumers to identify loans with terms that are better for their particular situation. Ignoring specific credits for services the creditor intends to pay also can reduce the accuracy of the cash to close amount disclosed under § 1026.37(h).

Accordingly, the Bureau is adopting § 1026.37(g)(6) and its accompanying commentary substantially as proposed, except with minor modifications to provide clarity and to indicate that if there is no amount for lender credits disclosed under § 1026.37(g)(6), the disclosure should be left blank, to reduce the amount of numbers on one page and the potential for information overload. In addition, the Bureau is adopting additional comment 37(g)(6)(ii)-2 to clarify that any credit disclosed pursuant to § 1026.37(g)(6)(ii) should be sufficient to cover the total amount of closing costs disclosed under § 1026.37(f) and (g) that the creditor has represented to the consumer are covered by the credit under the terms of the loan.

The Bureau is adopting the requirements in § 1026.37(g)(6) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of the total amounts consumers must pay to consummate the loan and close the property transaction will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for this requirement. This information ensures that the features of mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(7) Item Descriptions and Ordering

The Bureau's proposed § 1026.37(g)(7) would have required the creditor, in identifying the items listed as Other Costs, to use terminology that briefly and clearly describes the item. All items would have been required to be listed in alphabetical order following the items prescribed to be included under the subheading.

As with proposed § 1026.37(f)(6), commenters generally objected to the requirement to list the items in alphabetical order under the applicable subheading, but did not propose an alternative method of ordering the items. Since the descriptions can vary from jurisdiction to jurisdiction and creditor to creditor, while still meeting the requirement that each item be described, there does not appear to be any method to order the items without defining the services provided in residential real estate transactions. Some commenters stated that the Bureau should define these services. However, the Bureau did not propose any such definitions or standardized descriptions. Accordingly, as discussed above in the section-by-section analysis of § 1026.37(f)(6), the Bureau believes it would not be appropriate to finalize any such definition or standard descriptions in this final rule. The Bureau believes that the requirement as proposed will enable consumers to understand the charges, and locate charges more easily. At the Bureau's consumer testing, consumers were able to use the descriptions and order of the charges to identify and compare charges between Loan Estimates. *See* Kleimann Testing Report at 280-83.

Accordingly, the Bureau is adopting § 1026.37(g)(7) substantially as proposed, but as with § 1026.37(f)(5), is not adopting the requirement to briefly and clearly describe the disclosed items, because the Bureau believes that the clear and conspicuous standard in § 1026.17(a)(1) is sufficient to provide clarity concerning how to describe the items on the Loan Estimate. The Bureau is adopting the requirements in § 1026.37(g)(7) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because a consistent listing of the costs that appear on the Loan Estimate and the Closing Disclosure will facilitate the consumer's comparison of the two disclosure documents and understanding of the transaction as a whole, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. This requirement also will ensure that the features of mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The Bureau is also adopting new comment 37(g)(7)-1 to refer to comment 37(f)(5)-1 for guidance.

37(g)(8) Use of Addenda

The Bureau's proposed § 1026.37(g)(8) would have provided that addenda may not be used to itemize disclosures required by § 1026.37(g). If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided under a subheading, the remaining charges would have been required to be disclosed as an aggregate amount in the last line permitted using the label "Additional Charges" under the applicable subheading. Proposed comment 37(g)(8)-1 would have clarified that a creditor is permitted to provide additional disclosures that are required by State law, as long as those disclosures are provided on a separate document whose pages are physically separate from, and are not presented as part of, the disclosures provided in accordance with § 1026.37.

The Bureau did not receive comments related to proposed § 1026.37(g)(8). Accordingly the Bureau is adopting § 1026.37(g)(8) and its accompanying commentary as proposed. The Bureau is adopting the requirements in § 1026.37(g)(8) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because standardization of the information provided on the disclosures required under § 1026.19(e) will provide consistent information that consumers will be able to use to better understand the mortgage transaction, shop for loans, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. This standardization will also ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permit consumers to more readily understand the costs, benefits, and risks associated with the mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), which is also a source of authority for the proposed requirements.

37(h) Calculating Cash to Close

The Bureau's proposed § 1026.37(h) would have required the disclosure of the calculation of an estimate of the cash needed from the consumer at consummation of the transaction using the heading "Calculating Cash to Close." Proposed comment 37(h)-1 would have clarified that the labels to be used on the Loan Estimate for each amount must match its description in proposed § 1026.37(h)(1) to (7) and would have referred to form H-24(A) of appendix H for illustrations.

Several commenters generally said that the Calculating Cash to Close table disclosed under § 1026.37(h) was difficult to apply in a transaction that did not include a seller and provided several suggested alternatives to address the differing nature of these types of transactions. Several commenters also stated that the estimated cash to close would appear as a negative number for transactions where a consumer was receiving cash at consummation and stated that consumers generally have difficulty in understanding negative numbers. Two national industry trade association commenters provided examples of suggested replacement tables for transactions without a seller, both of which started with the loan amount and then deducted payoffs and closing costs from the loan amount.

Based on these comments and a review of the differing nature of transactions that do not include a seller, the Bureau developed an alternative table for these types of transactions that starts with the loan amount and then deducts closing costs and payoffs from the loan amount to determine the amount of cash to or from the consumer. The alternative Calculating Cash to Close table reduced the number of variables to only three in the calculation of the estimated cash to or from the consumer at consummation and used check boxes to indicate whether the amount would be paid to or from the consumer at consummation. The Bureau tested this alternative Calculating Cash to Close table in three rounds of qualitative testing using a refinance transaction in which the consumer was receiving cash from the transaction, as well as a refinance transaction in which the consumer had to pay cash at consummation, to examine whether the shorter table was clearer to consumers. The testing compared the proposed table with the alternative table in such transactions. The testing established that consumers did understand the alternative table more readily in refinance transactions. While some consumers did realize that a negative number indicated the amount of cash that a consumer would receive at consummation in the proposed table, the alternative table provided the same information in a format that consumers more readily understood. *See* Kleimann Post-Proposal Testing Report at 54-55. The Bureau recognizes that either Calculating Cash to Close table can accurately disclose the amount of cash due to or from the consumer at consummation, and as such, is finalizing the alternative table as an option that a creditor can choose to provide, so long as it also provides the optional alternative disclosure under § 1026.37(d)(2), as well. In order to provide the optional disclosure, the Bureau is modifying the numbering of the provisions of proposed § 1026.37(h) to add for this optional alternative Calculating Cash to Close table under § 1026.37(h)(2).

One large bank commenter stated that it was unreasonable to require the creditor to know the amount of the deposit, payments to others, and funds that the consumer will have to pay at consummation. However, these amounts only have to be disclosed to the extent that the creditor knows the information at the time the Loan Estimate is delivered provided the creditor complies with the good faith requirement under § 1026.19(e)(1)(i). In addition, as discussed in the section-by-section analysis of § 1026.19(f), the cash to close can change before consummation.

The Bureau is adopting § 1026.37(h) as modified to add an optional calculation of cash to close for transactions that do not have a seller, as noted above, and described in further detail below. The Bureau is adopting the requirements in § 1026.37(h) pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a) because this disclosure will ensure that the features of the transaction 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, in light of the facts and circumstances.

37(h)(1) For All Transactions

37(h)(1)(i) Total Closing Costs

The Bureau's proposed § 1026.37(h)(1) would have required that the total closing costs be disclosed as calculated under § 1026.37(g)(6) as a positive number. Commenters did not provide any specific response to the inclusion of the total closing costs in the cash to close table. Accordingly, the Bureau is adopting proposed § 1026.37(h)(1) as § 1026.37(h)(1)(i).

37(h)(1)(ii) Closing Costs To Be Financed

The Bureau's proposed § 1026.37(h)(2) would have required that the amount of the closing costs to be paid from mortgage loan proceeds would be disclosed as a negative number. Commenters stated that proposed § 1026.37(h)(2) did not specify a method to calculate the amount of closing costs to be paid from mortgage loan proceeds. Accordingly, the Bureau is adopting proposed § 1026.37(h)(2) as § 1026.37(h)(1)(ii) and adopting comment 37(h)(1)(ii)-1 to clarify that the amount of closing costs financed is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed pursuant to § 1026.37(f) and § 1026.37(g) from the total loan amount. If the result of the calculation is positive, that amount is disclosed under § 1026.37(h)(1)(ii), but only to the extent that it does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6). For example, assume that a mortgage loan amount is $250,000, the estimated amount of all outstanding mortgage loans secured by the real property total $200,000, and the total estimated closing costs disclosed under § 1026.37(g)(6) are $10,000; the amount disclosed under § 1026.37(h)(1)(ii) is -$10,000, since the result of the difference between the mortgage loan amount and the estimated amount of all outstanding mortgage loans secured by the real property is positive $50,000, but since there are only $10,000 in closing costs, the amount disclosed is limited to -$10,000.

37(h)(1)(iii) Downpayment and Other Funds from Borrower

The Bureau's proposed § 1026.37(h)(3) would have required disclosure of the amount of the downpayment and other funds from the consumer at consummation to be disclosed as a positive number. In a purchase transaction the downpayment would have been calculated as the difference between the purchase price of the property and the principal amount of the credit. In all other transactions, the funds from the consumer would have been calculated pursuant to proposed § 1026.37(h)(5).

One non-depository lender commenter supported the inclusion of the downpayment in the table. Other commenters did not comment on proposed § 1026.37(h)(3), except to the extent that any amount disclosed under proposed § 1026.37(h)(3) is based on the calculation provided under 1026.37(h)(5), as discussed below. Accordingly, the Bureau is adopting proposed § 1026.37(h)(3) as § 1026.37(h)(1)(iii) and also comment 37(h)(1)(iii)-1 to clarify that in the case of a transaction where the loan amount exceeds the purchase price of the property (other than a construction loan), the amount of the downpayment disclosed must be $0.

37(h)(1)(iv) Deposit

The Bureau's proposed § 1026.37(h)(4) would have required that the amount that is paid to the seller or held in trust or escrow by a third party pursuant to the terms of a contract for sale of real estate be disclosed as a negative number. Proposed comment 37(h)(4)-1 would have clarified that in any transaction other than a purchase transaction, the amount disclosed under proposed § 1026.37(h)(4) must be $0.

Two GSE commenters stated that the deposit disclosed under proposed § 1026.37(h)(4) should provide additional information concerning the source of funds that the consumer utilized to pay the seller or place in trust or escrow by a third party pursuant to the terms of a contract for sale of real estate. However, the source of funds is not a required disclosure under TILA or RESPA. It appears that the commenters proposed additional disclosures to establish a certification of the source of funds for the purpose of establishing compliance with their own requirements or enabling identification of fraudulent transactions more easily. The Bureau believes that the primary interest in a disclosure to a consumer is to disclose the transaction to the consumer and not to be a document to assist with the procedures of market participants. If the interests align or a modification can be made to align the interests without confusing consumers or making the disclosures more difficult to understand, the Bureau will consider such a modification. However, the Bureau believes any modification of this line of the Calculating Cash to Close table to indicate the source of funds likely would result in the need for additional pages and information overload for consumers. Alternative information can be provided by the consumer in the course of the underwriting of the transaction to demonstrate compliance with secondary market requirements. Accordingly, the Bureau is adopting § 1026.37(h)(1)(iv) and comment 37(h)(4)-1 as proposed, but redesignating them § 1026.37(h)(1)(iv) and comment 37(h)(1)(iv)-1, respectively.

37(h)(1)(v) Funds for Borrower

The Bureau's proposed § 1026.37(h)(5) would have required that the amounts to be disclosed under both proposed § 1026.37(h)(3) and proposed § 1026.37(h)(5) are calculated by subtracting the amount of debt being satisfied by the real estate transaction from the amount of the credit extended by the new loan, excluding any amount under proposed § 1026.37(h)(2) because that amount of the credit extended already has been accounted for in the cash to close calculation by inclusion in proposed § 1026.37(h)(2). "Funds for Borrower" was intended to represent generally the amount anticipated to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction, such as in cash-out refinance transactions. The determination of whether the transaction will result in "Funds for Borrower" would have been made under proposed § 1026.37(h)(5). When the result of the calculation would have been positive, that amount would have been disclosed under proposed § 1026.37(h)(3), and $0 would have been disclosed under proposed § 1026.37(h)(5). When the result of the calculation would have been negative, that amount would have been disclosed under proposed § 1026.37(h)(5), and $0 would have been disclosed under proposed § 1026.37(h)(3). When the result would have been $0, $0 would have been disclosed in both proposed § 1026.37(h)(3) and proposed § 1026.37(h)(5).

Two national industry trade association commenters stated that they were confused concerning proposed § 1026.37(h)(5) when comparing the requirements to the examples provided in the forms and comments in appendix H to Regulation Z of the proposed rule. These commenters appear to have misunderstood that the calculation under proposed § 1026.37(h)(5) would apply only to the amounts disclosed under proposed § 1026.37(h)(3) in a transaction that is not disclosed as a "purchase" transaction under proposed § 1026.37(a)(9)(i). The confusion arose when the commenters applied the calculation under proposed § 1026.37(h)(5) to determine the amount disclosed under proposed § 1026.37(h)(3) in a sample purchase transaction, which would have been inconsistent with proposed § 1026.37(h)(3)(i). Other than these comments, commenters did not address the calculation method discussed in proposed § 1026.37(h)(5). Accordingly, the Bureau is adopting proposed § 1026.37(h)(5) as § 1026.37(h)(1)(v), and adopting comment 37(h)(1)(v)-1 to clarify that the calculation under § 1026.37(h)(1)(v) is used in a non-purchase transaction to determine the amount disclosed under § 1026.37(h)(1)(iii), and that, in a purchase transaction, other than a construction loan transaction, the result of the calculation under § 1026.37(h)(1)(v) will result in the amount of $0 being disclosed under § 1026.37(h)(1)(v).

37(h)(1)(vi) Seller Credits

The Bureau's proposed § 1026.37(h)(6) would have required that the amount of any seller credit, to the extent known by the creditor, is disclosed as a negative number. Proposed comment 37(h)(6)-1 would have clarified that seller credits known by the creditor at the time of application are disclosed under proposed § 1026.37(h)(6), and that seller credits that are not known by the creditor at that time are not disclosed under proposed § 1026.37(h)(6).

Three national industry trade association commenters questioned how to disclose seller credits for specific charges, to the extent they are known by the creditor at the time the Loan Estimate is provided. The Bureau believes that additional clarification should be provided, and is modifying proposed comment 37(h)(6)-1 and adding comment 37(h)(6)-2 to address this comment. One national industry trade association commenter stated, as an alternative suggestion, that any specific charges that are encompassed by a seller credit should mean that the item so covered should be omitted from disclosure on the Loan Estimate entirely. This, however, would work against the provision of early, accurate information to the consumer of the costs associated with the extension of credit. The amount and size of any and all credits, including credits from the seller and the creditor, can be and often are the subject of negotiation during the real estate settlement process. A consumer that does not have the basic knowledge of the cost of a particular service does not have the information needed to determine the value of an offered concession. In addition, section 1419 of the Dodd-Frank Act amended TILA to require that the creditor disclose "the aggregate amount of settlement charges for all settlement services provided in connection with the loan . . ." 15 U.S.C. 1638(a)(17). This requirement is not limited to those charges paid by the consumer, which are subject to separate disclosure pursuant to another clause of that section. In addition, the consumer ultimately would be liable to pay for many of the services if the seller did not provide the credit at closing for some reason, and thus, the Bureau believes the consumer should be provided the information about the required and likely costs of the transaction.

Accordingly, the Bureau is adopting proposed § 1026.37(h)(6) and proposed comment 37(h)(6)-1 as § 1026.37(h)(1)(vi) and comment 37(h)(1)(vi)-1, respectively, and also is adopting comment 37(h)(1)(vi)-2, which clarifies that seller credits for specific charges disclosed under § 1026.37(f) or § 1026.37(g) can be disclosed as the total of the estimated charge for those specific items that the seller has agreed to pay, to the extent known by the creditor.

37(h)(1)(vii) Adjustments and Other Credits

The Bureau's proposed § 1026.37(h)(7) would have required that the amount of other credits for all loan costs and other costs, to the extent known, that are to be paid by persons other than the loan originator, creditor, consumer, or seller be disclosed as a negative number. Proposed comment 37(h)(7)-1 would have clarified that amounts expected to be paid by third parties not involved in the transaction, such as gifts from family members and not otherwise identified under proposed § 1026.37(h), would be included in this amount to the extent known by the creditor. Proposed comment 37(h)(7)-2 would have clarified that the term "persons" as used in proposed § 1026.37(h)(7) includes all individuals and any entity, regardless of the legal structure of such entity. Proposed comment 37(h)(7)-3 would have clarified that only credits from parties other than the creditor or seller can be disclosed pursuant to proposed

§ 1026.37(h)(7). Seller credits and credits from the creditor would have been disclosed pursuant to proposed § 1026.37(h)(6) and § 1026.37(g)(6)(ii), respectively. Proposed comment 37(h)(7)-4 would have clarified that other credits known by the creditor at the time of application are disclosed under proposed § 1026.37(h)(7) and that other credits that are not known by the creditor are not disclosed under proposed § 1026.37(h)(6).

A national industry trade association commenter requested further clarification as to the identity of any adjustments that would be included under proposed § 1026.37(h)(7). Another national industry trade association commenter stated that the proceeds from a subordinate-lien loan should be applied to the Calculating Cash to Close table, but did not specify the appropriate place for inclusion in the table. In some cases, subordinate financing may not be known or set at the time the Loan Estimate will be provided. Consumers also can use disclosures related to the amounts of the subordinate financing, whether through the use of integrated disclosures or other information provided from the source of the alternative financing if the subordinate financing is not subject to the integrated disclosures, in order to determine if the consumer can provide sufficient funds to complete the transaction.

Accordingly, the Bureau is adopting proposed § 1026.37(h)(7) and proposed comments 37(h)(7)-1, -2, and -3 as § 1026.37(h)(1)(vii) and comments 37(h)(1)(vii)-1, -2 and-3, respectively. The Bureau also is adopting proposed comment 37(h)(1)(vii)-4 with modification, and adopting new comments 37(h)(1)(vii)-5 and -6 to provide greater clarity regarding the items to be disclosed, and to clarify how to include proceeds from subordinate financing and adjustments to the amount disclosed under § 1026.37(h)(1)(vii).

37(h)(1)(viii) Estimated Cash to Close

The Bureau's proposed § 1026.37(h)(8) would have required that the total of the amounts disclosed under proposed § 1026.37(h)(1) to (7) be disclosed. Proposed comment 37(h)(8)-1 would have clarified that the sum total of proposed § 1026.37(h)(1) through (7) must be disclosed pursuant to proposed § 1026.37(h)(8) as either a positive number, a negative number, or zero. The comment would have further clarified that a positive number would have indicated the estimated amount that the consumer can be expected to pay at consummation to complete the transaction. A negative number would have indicated the estimated amount that the consumer can receive from the transaction at consummation. A result of zero would have indicated that the consumer is anticipated neither to pay any amount nor receive any amount from the transaction at consummation. Commenters did not address directly the disclosure of the total of the amounts disclosed under proposed § 1026.37(h)(1) to (7) or under proposed § 1026.37(h)(8), except to the extent that they stated that the disclosure of a negative number may be confusing to consumers, as discussed above. Accordingly, the Bureau is adopting proposed § 1026.37(h)(8) and comment 37(h)(8)-1 as § 1026.37(h)(1)(viii) and comment 37(h)(1)(viii)-1, respectively.

37(h)(2) Optional Alternative Calculating Cash to Close Table for Transactions Without a Seller

The Bureau, as discussed above, recognizes that in many transactions without a seller the level of detail of the Calculating Cash to Close table may not be necessary for such transactions because of the different nature of the transaction. For example, prorations of real property taxes between the consumer and seller, which would be disclosed to the extent known by the creditor under § 1026.37(h)(1)(vii) would not need to be disclosed in a transaction without a seller. In addition, there would not be a deposit under a purchase and sale contract for the real estate to be disclosed under § 1026.37(h)(1)(iv). Therefore, such items do not need to be reflected in the Calculating Cash to Close table in those types of transactions. As discussed in the section-by-section analysis of § 1026.37(d) above, the Bureau is responding to comments and the results of consumer testing the Bureau conducted after issuance of the proposal that indicate that negative numbers are confusing for consumers. In addition, the Bureau is responding to comments that stated that the loan amount would be an appropriate start for any disclosure of cash to close. The determination of cash to close in these transactions can be simplified to three elements in a straightforward calculation methodology to determine either the amount of cash the consumer needs to provide at consummation to complete the transaction or the amount of cash the consumer will receive at consummation. The loan amount less the sum total of closing costs and other payments from loan proceeds at consummation will provide the total amount of cash needed from the consumer or that is due to the consumer at consummation. Any determination of the amount of closing costs that are being financed is the result of a calculation, not a variable in the calculation. Closing costs are financed to the extent that the total amount of other payments made from loan proceeds are less than the loan amount. Any such amounts left over are utilized by the consumer to pay for closing costs, up to the full amount of closing costs.

Accordingly, the Bureau is adopting this optional alternative calculation methodology for the Calculating Cash to Close table as § 1026.37(h)(2), as further described below. The Bureau also is adopting comment 37(h)(2)-1, which clarifies that the optional cash to close table under § 1026.37(h)(2) can only be used in a transaction without a seller and is completely optional but must be used in conjunction with the alternative optional costs at closing table disclosure under § 1026.37(d)(2).

Pursuant to its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank section 1032(a), the Bureau is requiring creditors to provide an estimated table in order to disclose to the consumer how the estimated amount of cash needed at consummation to or from the consumer is calculated. This disclosure will effectuate the purposes of TILA by promoting the informed use of credit and will ensure the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, because it will indicate to the consumer the amount the consumer will have to pay at consummation of the credit transaction and closing of the real estate transaction.

37(h)(2)(i) Loan Amount

The Bureau is adopting § 1026.37(h)(2)(i), which requires the disclosure of the loan amount as disclosed under § 1026.37(b)(1) on the first line of the optional table with the label "Loan Amount."

37(h)(2)(ii) Total Closing Costs

The Bureau is adopting § 1026.37(h)(2)(ii), which requires the disclosure of the total closing costs as disclosed under § 1026.37(g)(6) as a negative number on the second line of the optional table with the label "Total Closing Costs."

37(h)(2)(iii) Payoffs and Payments

The Bureau is adopting § 1026.37(h)(2)(iii), which requires the disclosure of the total of all payments to third parties as part of the transaction not otherwise disclosed pursuant to § 1026.37(f) and (g) as a negative number, to the extent known to the creditor at the time the Loan Estimate is being issued, on the third line of the optional table with the label "Total Payoffs and Payments." The Bureau also is adopting comment 37(h)(2)(iii)-1 to clarify the types of payoffs and payments disclosed by providing examples of such payoffs and payments.

37(h)(2)(iv) Cash To or From Consumer

The Bureau is adopting § 1026.37(h)(2)(iv), which requires that the absolute value of the sum of § 1026.37(h)(2)(i), (ii), and (iii) be disclosed with a statement of the estimated amount due to or from the consumer on the fourth line of the optional table with the label “Cash to Close.” The Bureau is also adopting comment 37(h)(2)(iv)-1 to clarify the method by which a creditor indicates the estimated amount of cash due to or from the consumer by the use of check boxes as illustrated by form H-24(D) in appendix H to Regulation Z.

37(h)(2)(v) Closing Costs Financed

The Bureau is adopting § 1026.37(h)(2)(v), which requires that the sum of the amounts disclosed under § 1026.37(h)(2)(i) and (iii) be disclosed, but only to the extent that the calculation results in a positive amount no greater, and only up to the total amount of closing costs disclosed under § 1026.37(g)(6), labeled as “Closing Costs Financed (Paid from your Loan Amount).” The Bureau is also adopting comment 37(h)(2)(v)-1 to clarify that the amount disclosed under § 1026.37(h)(2)(v) cannot exceed the total amount of closing costs disclosed under § 1026.37(g)(6), even if the calculation results in an amount in excess of the sum disclosed under § 1026.37(g)(6). This calculation subtracts the total payoffs and payments from the loan amount and attributes the loan funds remaining to the financing of closing costs, and accordingly, the disclosed amount cannot exceed the total amount of closing costs. Although not part of the optional alternative table, the disclosure of the estimated closing costs financed is required pursuant to Dodd-Frank Act section 1419, which modified TILA section 128(a)(17). Accordingly, the Bureau is requiring the disclosure of this amount under § 1026.37(h)(2)(v) in conjunction with the optional alternative Calculating Cash to Close table.

37(i) Adjustable Payment Table

For certain credit transactions secured by a dwelling, TILA section 128(b)(2)(C)(ii) requires the disclosure of examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract. Among the examples must be the maximum regular required payment based on the maximum interest rate allowed under the contract. While this section requires examples based on changes to the interest rates, the requirement is triggered if either the interest rate may change or the "regular payments may otherwise be variable." 15 U.S.C. 1638(b)(2)(C)(ii). TILA section 128(b)(2)(C)(ii) does not, however, require the disclosure of the existence of loan terms that may cause the periodic payment to adjust without a change to the interest rate.

Proposed § 1026.37(i) would have required an Adjustable Payment (AP) table to disclose examples of the required periodic principal and interest payment, including the maximum possible required principal and interest payment, for loans with terms that allow the principal and interest payment to adjust not based on adjustments to the interest rate. In contrast, proposed § 1026.37(j) would have required provision of an Adjustable Interest Rate (AIR) table for credit transactions with terms that permit the interest rate to adjust after consummation. Proposed § 1026.37(i)(1) through (3) would have required the disclosure to state affirmatively or negatively whether the loan has an interest only, payment-option, or step-payment period, and the length of such period. Proposed § 1026.37(i)(4) also would have required the disclosure to state affirmatively or negatively whether the loan has a seasonal payment feature and the period during which periodic payments are affected by such feature. As discussed above with respect to proposed § 1026.37(a)(10), the Bureau stated in the proposal that it understood that some loans may be structured so that periodic principal and interest payments are not required to be made by the consumer in between specified unit-periods on a regular basis.

Proposed § 1026.37(i)(5) would have required disclosure of principal and interest payments, including: (i) the number of the payment of the first periodic principal and interest payment that may change; (ii) the frequency of subsequent changes to the periodic principal and interest payment; and (iii) the maximum periodic principal and interest payment that may occur during the term of the transaction, and the first payment that can reach such maximum. Proposed comment 37(i)(5)-1 would have clarified that the applicable unit-period should be disclosed in the subheading required by proposed § 1026.37(i)(5). Proposed comment 37(i)(5)-2 would have provided guidance on how to disclose the first payment adjustment required to be disclosed by § 1026.37(i)(5)(i) when the exact payment number is unknown at the time of the disclosure. Proposed comment 37(i)(5)-3 would have provided guidance regarding how to disclose the frequency of adjustments to the periodic principal and interest payment after the initial adjustment, as required by § 1026.37(i)(5)(ii). Proposed comment 37(i)(5)-4 would have provided guidance regarding how to calculate the maximum periodic principal and interest payment for purposes of the disclosure required by proposed § 1026.37(i)(5)(iii). Proposed comment 37(i)(5)-5 would have provided guidance regarding the disclosure of payments that do not pay principal.

Proposed comment 37(i)-1 would have clarified that under § 1026.37(i), the AP table may only be disclosed if the periodic principal and interest payment may change after consummation based on an adjustment that is not an adjustment to the interest rate, or if the transaction is a seasonal payment product as described in § 1026.37(a)(10)(ii)(E). As proposed, the creditor would not be permitted to disclose the table if the loan terms do not meet these requirements, even if the table were left blank. The format of the proposed table as required by § 1026.37(o), and as illustrated by form H-24, including sample form H-24(C) of appendix H, would have provided the affirmative or negative statement in bold text in the form of a question and answer. In addition, the examples of the periodic principal and interest payments would have been set apart from these answers by a subheading in bold font. The Bureau stated its belief in the proposal that, based on consumer testing, this format displays the information in a readily visible, clear, and understandable manner for consumers. Proposed comment 37(i)-1 further would have referenced comment 37-1, which, as finalized, clarifies that the general permission in proposed § 1026.37 to leave inapplicable disclosures blank is subject to the more specific prohibition in § 1026.37(i), which does not permit disclosure of the AP table when it is not applicable. Proposed comment 37(i)-2 would have provided guidance and examples of how the information required by proposed § 1026.37(i)(1) through (4) should be disclosed.

The format that would have been required by proposed § 1026.37(o), and illustrated by forms H-24, including a sample form H-24(C) of appendix H, provides that the information required by proposed § 1026.37(i) must be disclosed in a concise, organized table. This table would have appeared immediately adjacent to the AIR Table required by proposed § 1026.37(j) for loans that also permit the interest rate to adjust after consummation. The AP table would have used bold font for the questions and capitalized "yes" and "no" text for the answers required by proposed § 1026.37(i)(1), (2), (3), and (4). The AP table also would have used bold text for the subheading required by proposed § 1026.37(i)(5). Based on its testing, the Bureau believes this format displays the information in a clear, readily visible, and understandable manner for consumers.

The Bureau stated its belief in the proposal that to promote the informed use of credit, loan terms that may cause the periodic principal and interest payment to adjust without a change to the interest rate (such as an optional payment loan), or may include a period during which the payment may not pay principal (such as an interest only period), or where the consumer is not required to make payments should be clearly disclosed to consumers. In the Bureau's pre-proposal consumer testing, participants generally were able to use this information to evaluate the credit terms of the loan disclosed. For example, the Bureau stated in the proposal that it provided mortgage disclosures for interest only loans to participants using a prototype of an "adjustable payment table" at its consumer testing. The proposed table would have displayed whether the loan had an interest only, optional-payment, or step-payment period; the length of such period; the amount of the periodic principal and interest payment at the first adjustment; the frequency and amounts of subsequent adjustments; and the maximum possible principal and interest payment under the terms of the loan. As stated in the proposal, participants were able to use this table to determine the presence of the interest only period and the length of the period, as well as how the principal and interest payments would change as a result. Also, participants were able to understand that the purpose of the table generally was to inform them about such features. As described in the proposal, participants also were able to determine from the prototype table that the credit terms did not include one of the other features, such as an optional-payment or step-payment period.

The Bureau proposed these requirements pursuant to TILA section 128(b)(2)(C)(ii), and its authority under TILA section 105(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act. The Bureau proposed to use its authority under TILA section 105(a) to require this information to be disclosed for all transactions subject to § 1026.19(e) and (f). The Bureau believed, as stated in the proposal, that this information may effectuate the purposes of TILA by allowing consumers to compare more readily the different loan terms available to them, and specifically, whether they contain such adjustable or seasonal payment terms. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau stated that this disclosure would have ensured that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks of the transaction. The Bureau further stated its belief in the proposal that this information may improve consumer awareness and understanding of transactions involving residential mortgage loans and is in the interest of consumers and in the public interest.

One large bank commenter stated that the AP table and the similar AIR table required by proposed § 1026.37(j) are vital for consumers and should be placed on the first page of the Loan Estimate and the Closing Disclosure. In contrast, a credit union commented that the AP and AIR tables were too detailed and would be confusing to consumers and thus should be eliminated from the integrated disclosures altogether. The Bureau received numerous comments from industry objecting to the requirement that the AP and AIR tables be included on the integrated disclosures only for certain transactions because doing so requires programming software for a "dynamic" form. These commenters noted that "static" forms which are the same for every transaction, such as the current RESPA GFE and RESPA settlement statement, are much less expensive to program. These commenters opined that requiring costly dynamic forms would force industry to pass such costs on to the consumer. Because the comments concern the required formatting of the various parts of the Loan Estimate, they are discussed in the section-by-section analysis of § 1026.37(o), below.

A document preparation company commented that consumers may be confused by the requirement in proposed comment 37(i)-2.iv, regarding seasonal payments, to disclose the months in which payments are *not* made. The commenter requested that instead of disclosing, for example, "from June to August," the disclosure should be "no payment from June to August." A document preparation company further requested guidance on how to disclose a preferred rate product in the AP table.

With respect to commenters' suggestions to either move or delete the AP and AIR tables altogether, based on the Bureau's extensive consumer testing of the integrated disclosures generally and the AP and AIR tables specifically, the Bureau believes that the tables provide valuable information to consumers. Indeed, the Bureau's testing confirms that consumers relied on the AP and AIR tables in making decisions regarding competing loan products. *See* Kleimann Testing Report at 144, 196. On the other hand, while the information disclosed on the AP and AIR tables is important, the Bureau has designed the integrated disclosures to place the information that is used most and that is the most easily understandable by consumers on the first page, with more detailed information provided on subsequent pages. *See* Kleimann Testing Report at xiii. Moreover, § 1026.37(b)(6) requires a statement on the first page of the Loan Estimate referring to the AP and AIR tables if the transaction has an adjustable interest rate or adjustable payment feature. Accordingly, the Bureau declines either to delete the AP and AIR tables or to move them to the first page of the disclosures.

With respect to commenters' criticism of the "dynamic" nature of the AP and AIR tables, the Bureau stated its belief in the proposal that the inclusion of the AP table in all transactions would be unduly distracting and confusing to a consumer and could contribute to information overload, especially if an entire table is included only to be left blank. Moreover, requiring disclosure of the AP and AIR tables only for transactions with adjustable interest rates or adjustable payment features makes it immediately obvious when transactions have those features and therefore easier for consumers to compare different loan products. Further, though the Bureau understands that dynamic programming may be more expensive for industry during the initial implementation of the integrated disclosures, software programming is a one-time cost that does not outweigh the expected benefit to consumers of including the AP and AIR tables only when applicable to the transaction.

With respect to the disclosure of months in which seasonal payments are not made, while the Bureau understands the commenter's concern over potential confusion, a seasonal payment loan is a unique product marketed to consumers who likely already understand its seasonal nature. At the very least, the disclosure of "June to August" would put a consumer on notice of irregular payments and encourage a confused consumer to ask questions of the creditor or settlement agent concerning the payment terms. Further, there is limited space on the Loan Estimate and a longer disclosure does not fit in the allowable space. Regarding the request for guidance on preferred rate transactions, consistent with existing comment 17(c)(1)-2.i, where the creditor offers the consumer a preferred rate, the disclosures should reflect the terms of the legal obligation.

For the reasons discussed and pursuant to the legal authority described above and in the proposal, the Bureau is adopting § 1026.37(i), comments 37(i)-1 and -2 substantially as proposed but with minor modifications for clarity, and is adopting comments 37(i)(5)-1, -2 -3, and -5 as proposed. The Bureau is adopting comment 37(i)(5)-4 as proposed with a modification to clarify that in the example of a fixed interest rate optional-payment loan with scheduled payments that result in negative amortization, the maximum payment disclosed should be calculated assuming the consumer elects to make the periodic payment that would increase the principal balance to the maximum amount at the latest time possible.

37(j) Adjustable Interest Rate Table

Currently, TILA does not expressly require disclosure of the interest rate for closed-end credit. However, as noted above, for closed-end credit secured by a dwelling, TILA section 128(b)(2)(C)(ii) requires disclosure of examples of the periodic principal and interest payment based on changes to the interest rate, including the maximum principal and interest payment during the life of the loan. 15 U.S.C. 1638(b)(2)(C)(ii). Regulation Z § 1026.18(s) currently requires, for closed-end credit transactions with adjustable interest rates secured by real property or a dwelling, disclosure of examples of the interest rate and periodic principal and interest payments, including the maximum of these amounts under the terms of the loan. For federally related mortgage loans, § 1024.7(d) of Regulation X currently requires the summary table on page one of the RESPA GFE to disclose the initial interest rate, labeled "Your initial interest rate is." Then below another row of the summary table stating the initial monthly payment, the RESPA GFE states whether the interest rate is adjustable as an affirmative or negative answer, labeled "Can your interest rate rise?" If the answer is affirmative, the RESPA GFE states the maximum interest rate and when the first change in the interest rate will occur within the following sentence: "It can rise to a maximum of __%. The first change will be in _____."

The Bureau stated its belief in the proposal that loan terms that can cause the interest rate to adjust should be clearly disclosed to consumers. At the Bureau's pre-proposal consumer testing, participants generally stated that information regarding potential changes to the interest rate was important in their evaluation of a loan. Participants generally understood that the interest rate affected the amount of interest due under the loan and used the information regarding potential changes to the interest rate to evaluate loans. Although proposed § 1026.37(b)(2) would have provided key information about interest rate adjustments, the Bureau stated in the proposal that it believed more detail regarding an adjustable interest rate is important because it would provide consumers with additional information regarding potential changes to the interest and periodic payments that may be useful in evaluating and comparing loans.

As described in the proposal, the Bureau provided mortgage disclosures for adjustable interest rate loans to participants using a prototype of an "Adjustable Interest Rate Table" at its consumer testing. The table displayed information about the index and margin applicable to the loan, the initial interest rate, the minimum and maximum interest rates during the life of the loan, the frequency of changes to the interest rate, and limits on the interest rate changes. Participants in the pre-proposal testing were able to understand that the purpose of the table generally was to inform them about the adjustable interest rate terms under the loan and often used the table to compare adjustable rate loans. The table, as proposed, enabled consumers to determine the interest rate terms of the transaction and to compare two adjustable rate loans with different terms.

Therefore, the Bureau proposed to use its authority under TILA section 105(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act to require more detailed information regarding the terms of an adjustable interest rate to be disclosed in a separate table, called the AIR Table, under proposed § 1026.37(j). As stated in the proposal, the information regarding the index and margin applicable to the interest rate changes, the lifetime cap and floor on the interest rate, and limits on interest rate adjustments are not currently provided together to consumers in a clear, readily visible, and understandable manner. Consumers can find this information within the promissory note, but the Bureau stated in the proposal that consumers typically do not receive the promissory note until they are at the closing table. The Bureau stated its belief in the proposal that disclosure of this information in the Loan Estimate and Closing Disclosure will enable consumers to verify whether these terms have changed during the loan process. The Bureau believed that this is especially important if the index and margin have changed or the lifetime maximum interest rate has changed, because such changes can significantly affect the amounts of periodic payments over the life of the loan.

As described above and in the proposal, participants in the Bureau's pre-proposal consumer testing used much of this information and generally considered interest rate information to be an important factor in evaluating a loan. Participants were able to compare this information between loans and between the disclosures provided after application and prior to loan closing. As stated in the proposal, the Bureau believed this information may enable consumers to understand and compare credit terms more readily, effectuating the purposes of TILA. For similar reasons, the Bureau stated its belief that this disclosure will ensure that the features of the transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act. The Bureau also believed this information will improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

Proposed § 1026.37(j)(1) would have required disclosure of the index and margin for an adjustable rate loan for which the interest rate will adjust according to an external index. For a loan with an interest rate that changes based on scheduled or pre-determined interest rate adjustments and does not also change based on the adjustment of an external index, such as a "step-rate" product, proposed § 1026.37(j)(2) would have required disclosure of the amount of any adjustments to the interest rate that are scheduled and their frequency. Pursuant to proposed § 1026.37(j)(3) through (6), the table also would have required disclosure of: (i) the interest rate at consummation of the loan transaction; (ii) the minimum and maximum possible interest rates after the introductory rate expires; (iii) the maximum possible change for the first adjustment of the interest rate; (iv) the maximum possible change for subsequent adjustments of the interest rate; (v) the number of months after interest for the first regularly scheduled periodic principal and interest payment begins to accrue when the interest rate may first change; and (vi) the frequency of subsequent interest rate adjustments.

Proposed comment 37(j)-1 would have clarified that the table required by proposed § 1026.37(j) may only be provided in the Loan Estimate when the interest rate may change after consummation. The creditor is not permitted to disclose the table in the Loan Estimate if the interest rate will remain fixed, even if the table is left blank. Proposed comment 37(j)(1)-1 would have provided guidance regarding how the name of the index may be shortened. Proposed comment 37(j)(2)-1 would have clarified that the table discloses the information required by § 1026.37(j)(2) only if the loan does not also permit the interest rate to adjust according to an external index. Proposed comment 37(j)(3)-1 would have provided guidance regarding the initial interest rate that must be disclosed. Proposed comment 37(j)(4)-1 would have clarified how the minimum interest rate should be disclosed if the legal obligation does not state a minimum rate. Proposed comment 37(j)(4)-2 would have clarified how the maximum interest rate should be disclosed if the legal obligation does not state a maximum interest rate. While § 1026.30 currently provides that a creditor must include a maximum interest rate in any closed-end consumer credit contract secured by a dwelling for which the annual percentage rate may increase after consummation, that section applies only to transactions secured by a dwelling.

The disclosure required by proposed § 1026.37(j)(4) applies to transactions subject to § 1026.19(e), which includes consumer credit transactions secured by real property, which may not include a dwelling. Proposed comment 37(j)(5)-1 would have clarified that if the exact month of the first adjustment to the interest rate is not known at the time the disclosure is provided, the earliest possible month must be disclosed under proposed § 1026.37(j)(6). Proposed comment 37(j)(6)-1 would have clarified that when more than one limit applies to subsequent adjustments to the interest rate, the largest amount must be disclosed under proposed § 1026.37(j)(6). The format required by proposed § 1026.37(o), and illustrated by proposed form H-24, including sample form H-24(C) of appendix H, would have provided the information required by proposed § 1026.37(j) in a concise, single table. This table would have appeared immediately adjacent to the AP table required by proposed § 1026.37(i) for loans that permit the periodic principal and interest payment to adjust based on an adjustment other than an adjustment to the interest rate. The table would have used concise labels and bold subheadings for disclosures of the frequency of interest rate changes and the limits on interest rate changes. Based on its testing, the Bureau stated its belief in the proposal that this format displays the information in a clear, readily visible, and understandable manner for consumers.

As it did for the AP table, the Bureau received comments generally criticizing or praising the placement of the AIR table on the Loan Estimate. Comments related to the placement of the tables are discussed in the section-by-section analysis of § 1026.37(i), above. Moreover, the Bureau received comments from industry objecting to the dynamic nature of the AIR table disclosure because programming such a form is more expensive than programming a static form. The Bureau also received a comment from a document preparation company stating that referring to the Adjustable Interest Rate table as the “AIR” table would be confusing to industry because AIR is an acronym already used to refer to Appraiser Independence Requirements. A national trade association representing mortgage lenders commented that disclosing the index plus a margin is not useful for consumers and § 1026.37(j)(1) should instead require disclosure of the index value plus the margin. A trade association representing mortgage lenders commented that disclosure of the initial interest rate in the AIR table pursuant to § 1026.37(j)(3) would conflict with the requirement in proposed § 1026.37(b)(2) to disclose the fully-indexed rate in the Loan Terms table and would therefore confuse consumers. A trade association representing mortgage lenders commented that the starting date for calculating the first month in which the interest rate may change pursuant to proposed § 1026.37(j)(5)(i) was inconsistent with the starting date under proposed § 1026.37(b)(8) for disclosure of changes to the interest rate in the Loan Terms section of the Loan Estimate. A document preparation company commenter suggested that proposed § 1026.37(j)(6) seems to presume that interest rate cap adjustments would be equal for interest rate increases and for interest rate decreases. The commenter noted that this may not always be the case and requested guidance on how to disclose caps that differ for interest rate increases and decreases. The comments related to proposed § 1026.37(o) as they affect the formatting of the various parts of the Loan Estimate will be discussed in the section-by-section analysis of that provision.

With respect to the dynamic nature of the table, as more fully discussed above with respect to the AP table in § 1026.37(i), the Bureau believes that the inclusion of a blank AIR table in transactions where it is not applicable would be unduly distracting and confusing to a consumer and potentially cause information overload. Further, the dynamic nature of the form may better enable consumers to compare different loan products. Though it may be more costly for industry to implement dynamic forms, the one-time cost of implementation does not outweigh the consumer benefit of a dynamic AIR table. Accordingly, the Bureau is adopting comment 37(j)-1 as proposed. Regarding the acronym "AIR," the Bureau received such a comment from only one source and does not believe that the acronym AIR as referring to

Appraiser Independence Requirements is common enough to cause confusion with the Adjustable Interest Rate table acronym for consumers. The Bureau does not believe that industry will be confused by using the acronym in the context of the disclosures. Accordingly, the Bureau declines to revise the heading for the AIR table.

Regarding the requirement in § 1026.37(j)(1) that the index and margin be disclosed, the disclosure required is the index and not the index value, because the index value for an adjustable rate loan will change over the life of the loan and the Bureau believes it is useful for the consumer to understand that his or her interest rate is a function of an index plus a margin. Moreover, the only index value that could be disclosed on the Loan Estimate is the value on the date of the disclosure which is not useful to the consumer. The Bureau continues to believe that requiring disclosure of the external index used to determine an interest rate for an adjustable rate loan will benefit consumers and effectuate the purposes of both TILA and RESPA and accordingly is finalizing § 1026.37(j)(1) as proposed.

With respect to the comment that disclosure of the initial interest rate would conflict with the disclosure of the interest rate required by § 1026.37(b)(2), as discussed more fully in the section-by-section analysis of § 1026.37(b)(2), the disclosure required in the Loan Terms table under § 1026.37(b)(2) is the initial interest rate and not the fully-indexed rate as some commenters believed. Accordingly, there is no conflict between the rates disclosed to the consumer in the Loan Terms and AIR sections of the Loan Estimate. With respect to caps being different for interest rate increases and decreases, § 1026.37(j)(6) requires disclosure of the maximum possible change that applies to the interest rate adjustments. Accordingly, a creditor would disclose the greater of the limits under § 1026.37(j)(6).

Regarding the beginning date for calculating the first month in which the interest rate may change pursuant to § 1026.37(j)(5)(i), as discussed more fully in the section-by-section analysis of § 1026.37(b)(8), the starting date for calculations related to the interest rate is different from those related to payments because interest payments are made in arrears in most mortgage loan transactions. The beginning date for the time required to be disclosed in the disclosure required by § 1026.37(j)(5)(i) and that for the disclosure required by § 1026.37(b)(8)(i) is intended to be the same date. However, to provide additional clarity, the Bureau is revising the language in final § 1026.37(j)(5)(i) to conform to the language in final § 1026.37(b)(8)(i).

The Bureau did not receive any comments regarding proposed § 1026.37(j)(2), (3), (4), or (6). The Bureau is adopting § 1026.37(j), (j)(1), (j)(2),(j)(3), (j)(4), and (j)(6) substantially as proposed, with minor modifications for clarity. The Bureau is revising § 1026.37(j)(5) as described above, based on the legal authority described above and in the proposal. The Bureau did not receive any comments regarding any of proposed comments 37(j)(1)-1, 37(j)(2)-1, 37(j)(3)-1, 37(j)(4)-1 or -2, 37(j)(5)-1, or 37(j)(6)-1. Accordingly, the Bureau is adopting those comments substantially as proposed, with minor modifications for clarity to comments 37(j)-1, 37(j)(4)-1 and -2, and 37(j)(5)-1.

37(k) Contact Information

Under TILA section 128(a)(1) and Regulation Z § 1026.18(a), the TILA disclosures must include the identity of the creditor. Comment 18(a)-1 clarifies that the “identity” of the creditor must include the name of the creditor, but may also include the creditor’s address and/or telephone number. As stated in appendix C to Regulation X, the RESPA GFE must include the name, address, phone number, and email address (if any) of the loan originator.

TILA, RESPA, and their implementing regulations do not currently require the disclosure of contact information for the individual loan officer, however. Therefore, the Bureau proposed to require that the Loan Estimate contain certain contact information for the loan officer as set forth in proposed § 1026.37(k) based on its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau stated in the proposal that it believed this contact information will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and more timely information on the costs of the settlement process. The Bureau further stated its belief that providing consumers with multiple types of contact information for the loan officers with whom they interact on the transaction will allow consumers easier access to information relevant to the transaction (including costs), which in turn ensures that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Moreover, the Bureau believed that such disclosure will improve consumers’ awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

In light of the differing requirements under TILA and RESPA with regard to the types of contact information disclosed on the early TILA disclosure and RESPA GFE, respectively, the Bureau also proposed § 1026.37(k) based on its mandate under sections 1032(f), 1098, and 1100A of the Dodd-Frank Act to propose rules and forms that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. As discussed above, appendix C to Regulation X states that the RESPA GFE must include the name, address, phone number, and email address (if any) of the loan originator. Accordingly, as part of the Bureau's statutory mandate to integrate the TILA and RESPA disclosures, the Bureau stated in the proposal that it must integrate the disclosures currently required under Regulation X with the TILA-mandated disclosures of the creditor's identity, discussed above. Furthermore, TILA section 129B(b)(1)(B), 15 U.S.C. 1639b(b)(1)(B), which was added by section 1402(a)(2) of the Dodd-Frank Act, mandates that each mortgage originator include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry (NMLSR or NMLS). TILA section 129B(b)(1)(B) has been implemented in a separate rulemaking, the Bureau's 2013 Loan Originator Final Rule, 78 FR 11279 (Feb. 15, 2013), as § 1026.36(g).

The Bureau proposed to use its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and, for residential mortgage loans, 1405(b) of the Dodd-Frank Act to propose § 1026.37(k) for transactions subject to proposed § 1026.19(e). Proposed § 1026.37(k) would have required creditors to provide certain contact and licensing information for themselves, the mortgage broker, and their respective loan officers, as applicable. In the proposal, the Bureau stated its expectation to harmonize the final rule with the rulemaking implementing TILA section 129B(b)(1)(B).

The Bureau stated its belief in the proposal that requiring on the Loan Estimate the disclosure of the name and NMLSR identification number (NMLSR ID) number, if any, for the creditor, mortgage broker, and the loan officers employed by such entities, as applicable (or, if none, the license number or other unique identifier, if any, issued by the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such entity's or individual's business activities) may provide consumers with the information they need to conduct the due diligence necessary to ensure that any creditor, mortgage broker, and associated loan officer selected to originate the loan is appropriately licensed. The Bureau further stated its belief that having this information may help consumers assess the risks associated with services and service providers retained in connection with the transaction, which in turn promotes the informed use of credit (consistent with TILA section 105(a)), ensures that consumers are provided with greater and more timely information on the costs of the settlement process (consistent with RESPA section 19(a)), ensures that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction in light of the facts and circumstances (consistent with Dodd-Frank Act section 1032(a)), and improves consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public (consistent with Dodd-Frank Act section 1405(b)).

Thus, under the master heading "Additional Information About This Loan," proposed § 1026.37(k)(1) would have required the name and NMLSR ID, if any, for the creditor and the mortgage broker, if applicable. Proposed § 1026.37(k)(2) would have required the name and NMLSR ID for the loan officer associated with the creditor and mortgage broker identified in proposed § 1026.37(k)(1), if applicable. In the event the creditor, mortgage broker, or individual loan officer has not been assigned an NMLSR ID, proposed § 1026.37(k)(1) and (2) would have required the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the creditor or mortgage broker is licensed and/or registered to be disclosed, if any. Proposed § 1026.37(k)(3) would have required an email address and phone number for each loan officer identified in proposed § 1026.37(k)(2).

Proposed comment 37(k)-1 would have provided a description of the NMLSR ID.

Proposed comment 37(k)-1 also referenced provisions of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) requiring individuals to register or obtain a license through the NMLSR, and clarifies that the information required in § 1026.37(k)(1) and (2) must be provided for any creditor, mortgage broker, and loan officer that has obtained an NMLSR ID. Proposed comment 37(k)-2 would have provided clarification as to the nature of the license or other unique identifier that is to be disclosed in the event the creditor, mortgage broker, or individual loan officer has not been assigned an NMLSR ID. Proposed comment 37(k)-3 would have clarified that the loan officer is the individual who interacts most frequently with the consumer and who has an NMLSR identification number or, if none, a license number, or other unique identifier to be disclosed under proposed § 1026.37(k)(2), as applicable.

Several trade associations representing mortgage lenders requested guidance on whether a creditor could provide a general email address and phone number for the creditor or loan originator organization, rather than for an individual loan officer in the event that the individual loan officer were unavailable. Two GSEs commented and stated in an ex parte meeting that disclosure of a State license identification number or other unique identifier will not be useful to industry or consumers without stating the State or locality which issued the license.

With respect to the commenter's request to provide a general phone number or email address, the Bureau believes that providing such a general phone number or email address for the loan officer's lender or mortgage broker, as applicable, would comply with § 1026.37(k)(3) if no such information is generally available for the loan officer and is adding comment 37(k)-4 to that effect. The Bureau is otherwise adopting § 1026.37(k)(3) as proposed.

In response to the comment that disclosure of a State license identification number would be more useful with a disclosure of which State issued the license, the Bureau is revising

§ 1026.37(k)(1) and (2) to require the disclosure of the abbreviation for the State of the applicable jurisdiction before the word "License" in the disclosure required by § 1026.37(k)(2). The Bureau is also revising § 1026.37(k)(2) to clarify that the loan officer must be disclosed for both the creditor and the mortgage broker, if there is a mortgage broker in the transaction. The Bureau is further revising comment 37(k)-2 to clarify how to disclose the State abbreviation.

For the reasons discussed and pursuant to the legal authority described above, the Bureau is adopting § 1026.37(k)(2) and comment 37(k)-2 as revised to clarify the requirement to disclose the loan officer for both the creditor and the mortgage broker, if any, and is further revising § 1026.37(k)(1), (2) and comment 37(k)-2 to require disclosure of the abbreviation for the applicable State issuing a license identification. The Bureau is also making a technical revision to § 1026.37(k)(1) to remove the requirement to disclose the name of the primary contact for the consumer because that requirement is already in § 1026.37(k)(2). The Bureau is adopting § 1026.37(k)(3) as proposed. The Bureau is adopting comments 37(k)-1 and -3 substantially as proposed but with minor modifications for clarity. The Bureau is adding comment 37(k)-4 to permit disclosure of a general email address and phone number under limited circumstances. The Bureau believes that final § 1026.37(k) and its accompanying commentary are consistent with § 1026.36(g) as adopted by the 2013 Loan Originator Final Rule, which implemented TILA section 129B(b)(1)(B) and requires a loan originator organization to include its name and NMLSR ID as well as the name and NMLSR ID of any individual loan originator with primary responsibility for the loan origination on certain specified loan documents for all consumer credit transactions secured by a dwelling.

37(l) Comparisons

TILA generally focuses on disclosing the long-term cost of credit. However, many of the disclosures required by the statute have proven confusing for consumers. As discussed below and in part II.D above, Federal agencies have long recognized that certain statutorily-required disclosures, such as the finance charge and amount financed, are of limited effectiveness for communicating the cost of credit to consumers and that, in some cases, the disclosures hinder consumers' ability to understand their credit terms. One problem with the TILA disclosures is consumer confusion between common contract terms, such as interest rate and loan amount, and the required statutory disclosures such as the annual percentage rate and the amount financed. For example, the Board-HUD Joint Report and consumer testing conducted by the Board and the Bureau indicate consumer confusion exists over the difference between the contract interest rate and the annual percentage rate (APR), in part because both are expressed in the form of a rate and in part because of the difficulty in communicating to consumers the meaning of the APR. The TILA disclosures also focus on the cost of credit based on the loan's contractual term, which for mortgages is typically 15 or 30 years. Because many consumers do not hold their mortgages to term, the TILA disclosures do not accurately reflect the cost of credit in these circumstances. As discussed below and in part III above, the results of the Bureau's consumer testing is consistent with these concerns.

The Bureau believes that providing consumers with useful tools to compare loans is critical to carrying out the purposes of TILA, RESPA, and the Dodd-Frank Act. Accordingly, for the reasons described below, the Bureau grouped several key metrics together on the first page of the Loan Estimate and shifted others to the last page of the Loan Estimate. In addition, the Bureau provided certain items only on the Closing Disclosure because they are less useful to consumers early in the lending process and create the risk of undermining the effectiveness of the Loan Estimate. The forms focused on presenting the basic loan terms and risk features to consumers first, because these disclosures are critical to evaluating affordability and facilitating comparison of loans and are readily understandable to consumers, unlike other statutory disclosures. The Bureau adopted this approach to the TILA disclosures because consumer testing conducted by the Bureau, as well as prior testing conducted by the Board, strongly indicates that consumers benefit from a disclosure that highlights loan terms that are understandable and useful to consumers in evaluating the costs of credit and consumers' ability to afford those costs, such as the interest rate, monthly payment amount, and amount of cash needed to close the loan, and deemphasizes terms that have proven confusing or of limited use to consumers. *See* Kleimann Testing Report at 297-304.

Based on research regarding consumer comprehension and behavior and the results of the Bureau's consumer testing, the Bureau believes that the disclosure of the total payments (of principal, interest, mortgage insurance, and loans costs) a consumer will have made through the end of the 60th month after the due date of the first periodic payment (In 5 Years), the annual percentage rate (APR), and the total interest percentage (TIP) calculations on the final page of the Loan Estimate and apart from the key loan terms may enhance the overall understanding of the disclosures. The Bureau's consumer testing also confirmed that consumers are able to locate the longer-term measures of the cost of credit, notwithstanding the fact that the forms shift those disclosures from the first page of the disclosure. Moreover, the Bureau's consumer testing suggested that moving the disclosure of the APR away from the disclosure of the loan's contract interest rate and placing the APR with other long-term metrics may reduce consumer confusion and highlight the APR as a special tool for comparing costs over time. *See* Kleimann Testing Report at 297-304.

Accordingly, proposed § 1026.37(l) would have required creditors to disclose a table containing information required by TILA section 128(a)(4), (5), (8), and (19): (1) the total payments (principal, interest, mortgage insurance, and loan costs) a consumer will have made through the end of the 60th month after the due date of the first periodic payment (In 5 Years); (2) the APR; and (3) the total interest percentage (TIP), as described in § 1026.37(l)(1) through (3). The table would have appeared under the master heading "Additional Information About This Loan," with the heading "Comparisons," along with the statement, "Use these measures to compare this loan with other loans." The comparisons table would have appeared on the final page of the Loan Estimate, apart from the key loan terms identified on the first page of the Loan Estimate. *See* proposed § 1026.37(o) and proposed form H-24.

37(l)(1) In Five Years

The Bureau's Proposal

The total of payments disclosure has been confusing for consumers during consumer testing. For example, consumer testing conducted for purposes of the Board's 2009 Closed-End Proposal found that many consumers did not understand the total of payments disclosure and that, even when consumers understood the meaning, most did not consider it important in their decision-making process. Macro 2009 Closed-End Report at *v*, 11. Based on the Board's testing and prior research about the total of payment disclosure, the Bureau considered alternative metrics that might prove more useful to consumers. As discussed above, one problem with the TILA-required disclosures is that they are calculated over the entire length of the loan, although consumers may typically only hold mortgage loans for five to seven years before selling the property or refinancing. Accordingly, the total of payments over the life of the loan is such a large number that consumers often find it overwhelming or unrealistic, and therefore not a meaningful disclosure of the cost of credit.

Furthermore, the total of payments over the life of the loan does not provide an accurate basis for identifying the lowest cost loan for the time a consumer may actually hold the loan. The Bureau also recognized that simply providing one disclosure would not give consumers an accurate view of how much their payments actually reduce the principal balance of the loan, which would help consumers pick the loan that puts them in the best financial position after the five to seven year mark if they do not sell the property or refinance. Accordingly, the Bureau developed a two-element disclosure.

First, proposed § 1026.37(l)(1)(i) would have required the creditor to disclose the dollar amount of the total principal, interest, mortgage insurance, and loan costs (disclosed pursuant to proposed § 1026.37(f)) scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement "Total you will have paid in principal, interest, mortgage insurance, and loan costs." Proposed comment 37(l)(1)(i)-1 would have clarified that the amount disclosed pursuant to § 1026.37(l)(1)(i) is the sum of principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment. The comment also would have clarified that, for purposes of § 1026.37(l)(1)(i), interest is calculated using the fully-indexed rate at consummation and includes any prepaid interest. The comment would have further provided that, for purposes of § 1026.37(l)(1)(i), the creditor assumes that the consumer makes payments as scheduled and on time. In addition, proposed comment 37(l)(1)(i)-1 would have provided that, for purposes of § 1026.37(l)(1)(i), mortgage insurance is defined pursuant to comment 37(c)(1)(i)(C)-1, and includes prepaid or escrowed mortgage insurance, and that loan costs are those costs disclosed pursuant to § 1026.37(f). Proposed comment 37(l)(1)(i)-2 would have provided guidance to creditors on calculating principal and interest disclosures for loans with negative amortization features. Proposed § 1026.37(l)(1)(i) would have implemented the requirements of TILA section 128(a)(5) and (8) for transactions subject to proposed § 1026.19(e). The Bureau proposed to modify the total of payments disclosure to reflect the total payments over five years, rather than the life of the loan, on the Loan Estimate provided to consumers near the time of application. The Bureau proposed this modification pursuant to its authority under TILA section 105(a), Dodd-Frank Act 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

Second, proposed § 1026.37(l)(1)(ii) would have required the creditor to disclose the dollar amount of principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement "Principal you will have paid off." Proposed comment 37(l)(1)(ii)-1 would have clarified that the disclosure required by proposed § 1026.37(l)(1)(ii) is calculated in the same manner as the disclosure required by proposed § 1026.37(l)(1)(i), provided, however, that the disclosed amount reflects only the total payments to principal through the end of the 60th month after the due date of the first periodic payment.

Comments

In response to the proposal, a number of commenters favored the disclosure. Several trade association commenters noted that the "In 5 Years" disclosure is on the Loan Estimate, and the Total of Payments disclosure is on the Closing Disclosure. According to these commenters, the Bureau should require only the more useful disclosure in order to improve consistency, enhance the ability of consumers to compare the Loan Estimate with the Closing Disclosure, and reduce compliance burden.

One industry commenter argued that this disclosure would further confuse consumers regarding the costs and interest associated with a loan. Another industry commenter argued that this disclosure is misleading and wasteful if the loan terms extend beyond five years. A trade association commenter favored eliminating this disclosure, arguing that the Loan Estimate is already long enough and that this would help reduce information overload. Several consumer advocacy group commenters stated that the "In 5 Years" disclosure would not help consumers differentiate between high cost and low cost loans because the cost of the loan depends on whether and how the closing costs are financed, and that the disclosure needs to account for whether the consumer finances the closing costs and to convey the impact of prepaid finance charges. One industry commenter suggested that the Bureau should add back the Total of Payments disclosure to the Loan Estimate in order to more credibly, reliably, and accurately reflect the loan's total cost and create more consistency between the Loan Estimate and Closing Disclosure.

Some commenters raised concerns about how to calculate this disclosure and sought clarification with respect to adjustable rate mortgage loans. One industry commenter argued that calculating the disclosure based on the fully-indexed rate fails to account for a situation where the interest rate begins to adjust before the 60th payment, and that the use of the fully-indexed rate will give consumers inaccurate information regarding the true economics of their mortgage loan, which is very important for consumers who do not plan to keep their home for 5 years. This commenter suggested that the commentary be revised to indicate that the disclosure be calculated using the actual initial rate and maximum interest rate at the first and subsequent adjustment dates. Several trade association commenters argued that the calculation of this disclosure should be based on the actual initial interest rate, while assuming that the index value in effect at consummation will not change over the life of the loan and that the interest rate will adjust as provided for in the legal obligation. These commenters also argued that the prepaid interest on an adjustable rate mortgage loan should be based on the initial actual rate and not the fully-indexed rate, and that the amount of mortgage insurance included in the calculation will be affected by the interest rate used and whether it is assumed to increase as quickly as possible.

Several trade association commenters questioned the inclusion of loan costs in the “In 5 Years” disclosure, noting that if the final rule requires disclosure of the APR and finance charge, using loan costs for some calculations and prepaid finance charges for others will unnecessarily increase compliance burden. These commenters also questioned the definition of “loan costs” in comment 37(l)(1)(i)-1 which defines loan costs as costs disclosed under § 1026.37(f), arguing that the amount disclosed would be overstated because the definition does not account for credits provided by the creditor, mortgage broker, seller, or other party. One industry commenter argued that the “In 5 Years” calculation needs to include credits provided by the creditor because if they are not included, then the same mortgage loan will look more expensive if it is offered by a mortgage broker instead of a mortgage banker.

An industry commenter argued that instead of displaying the principal amount the consumer has paid in five years, the Bureau should replace it with the remaining unpaid principal balance metric because it is more meaningful and is a better representation of refinancings, where higher upfront costs are financed, resulting in a lower principal amount paid over five years but a higher principal balance.

One industry commenter argued that the “In 5 Years” disclosure in some ways inhibits the flexibility of community banks that often make mortgage loans with terms no longer than 36 months due to interest rate risk concerns. This commenter argued that the “In 5 Years” calculation should not include the balloon payment, if applicable, because that would be misleading if a consumer is seeking to compare short-term and long-term loans.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.37(l)(1) and comment 37(l)(1)(ii)-1 as proposed. Section 1026.37(l)(1)(i) requires disclosure of the total principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement "Total you will have paid in principal, interest, mortgage insurance, and loan costs." As discussed above, some commenters disfavored the inclusion of the "In 5 Years" disclosure due to concerns that it would be confusing to consumers, would cause information overload, and would not be valuable to consumers if the loan terms extend beyond five years. Another commenter argued that instead of displaying the principal amount the consumer has paid in five years, the Bureau should replace it with the remaining unpaid principal balance metric. However, as discussed in the proposal and in the Kleimann Testing Report, consumer testing conducted by the Bureau indicates that consumers can use the "In 5 Years" disclosure to compare loans they are considering and that, in some instances, these disclosures increase consumers' understanding of loan costs. *See* Kleimann Testing Report at xxvii, 297-299; 77 FR 51116, 51222-51223. The "In 5 Years" disclosure shows how much will be paid in total and the amount of principal that will be paid off in the five years after the loan closes, which is roughly the time period the average consumer stays in a loan. In addition, the Bureau believes that it is a more accessible time period for consumers than the life of the loan (typically 30 years), which is used in other disclosures, such as the current TILA "Total of Payments" disclosure. Most participants at the Bureau's consumer testing used the total payments and the principal paid components of the "In 5 Years" disclosure to compare the loan with the other loan they were considering and, sometimes, to increase their understanding of loan costs. *See* Kleimann Testing Report at 297-299. Consumer participants understood the relationship of principal and interest and generally wanted to choose loans with more principal paid off during the first five years. For example, some consumers who did not understand from page one of the Loan Estimate that a loan provided for interest only payments for a specified period were able to recognize that they would be making interest only payments as a result of the principal-paid component of the "In 5 Years" disclosure. Several industry participants stated that this disclosure covered a manageable period of time that could be useful to participants. *See* Kleimann Testing Report at 299.

Industry feedback provided in response to the Bureau's Small Business Review Panel Outline and in comments stated that implementation of the "In 5 Years" disclosure will require additional training and systems changes, and that it is unclear whether the disclosure will assist consumers. Most industry participants in the Bureau's consumer testing did not think that consumers would want to know the information in the disclosure, and some thought that the period should vary according to the loan term. *See* Kleimann Testing Report at 299. The Bureau has considered this; however, the consumer testing results discussed above indicated that consumers found the information useful. Thus, the Bureau believes that the "In 5 Years" disclosure will provide important benefits to consumers by disclosing the total of payments over a period that more accurately reflects the typical life of a mortgage loan.

The Bureau also is exercising its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to include mortgage insurance and other loan costs in the "In 5 Years" calculation. TILA section 128(a)(5) defines the total of payments as the sum of the amount financed and the finance charge. However, the Bureau believes including mortgage insurance and other loan costs, rather than the finance charge, in the calculation may enhance consumer understanding of mortgage transactions because consumers can cross-reference other sections of the Loan Estimate to determine what costs are actually included in the "In 5 Years" disclosure, permitting consumers to more readily compare loans, consistent with the purposes of TILA. In contrast, as discussed below, consumers have no way to know which costs are included in the finance charge. For these same reasons, the Bureau believes that the modification will ensure that the features of consumer credit transactions secured by real property 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, consistent with section 1032(a) of the Dodd-Frank Act, and will improve consumer awareness and understanding of residential mortgage loans and be in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

Section 1026.37(l)(1)(ii) requires creditors to disclose the dollar amount of principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment. The Bureau is adopting this requirement, in addition to § 1026.37(l)(1)(i), pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). As discussed above, the Bureau believes the disclosure will enhance consumers' understanding of the allocation of their payments between principal and interest and help consumers select the loan that puts them in the best financial position after a five-to-seven-year period if they do not sell the property or refinance, consistent with the purposes of TILA. For these same reasons, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau believes that the disclosure would ensure that the features of consumer credit transactions secured by real property 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.

As discussed above, one industry commenter suggested that the Bureau should add back the Total of Payments disclosure to the Loan Estimate in order to more closely reflect the loan's total cost and create more consistency between the Loan Estimate and Closing Disclosure. However, the "In 5 Years" disclosure is a modified Total of Payments disclosure designed to improve consumer understanding of the loan transaction. The Bureau is modifying the existing TILA total of payments disclosure to reflect the total payments over five years, rather than the life of the loan, on the Loan Estimate provided to consumers near the time of application.

The Bureau recognizes, however, that the Total of Payments disclosure is commonly used by creditors and supervisory agencies for compliance purposes, as well as consumer advocates. Therefore, under the final rule, creditors will be required to disclose a modified total of payments over the loan's full term in the Closing Disclosure provided to consumers at least three business days prior to consummation. *See* the section-by-section analysis of § 1026.38(o)(1).

As discussed above, one industry commenter argued that the "In 5 Years" disclosure in some ways inhibits the flexibility of community banks that often make mortgage loans with terms no longer than 36 months due to interest rate risk concerns. However, the Bureau notes that comment 37(l)(1)-1 should address any concerns regarding loans with shorter terms because it clarifies that in transactions with a scheduled loan term of less than 60 months, to comply with § 1026.37(l)(1), the creditor discloses the amounts paid through the end of the loan term.

With respect to the comments concerning the definition of "loan costs" and credits, the Bureau has considered this feedback but, in light of the research and consumer testing results discussed above, nevertheless believes that the “In 5 Years” disclosure as proposed will provide important benefits to consumers. The Bureau does not believe that the total loan costs factored into the “In 5 Years” disclosure should account for lender credits. As disclosed under § 1026.37(f) and reflected in the Closing Cost Details on page 2 of the Loan Estimate, total loan costs include origination charges, services the consumer cannot shop for, and services the consumer can shop for, but do not include lender credits. The total loan costs, along with other costs such as taxes and other government fees, prepaid charges, and the initial escrow payment at closing, combined with lender credits, compose the total closing costs disclosed under § 1026.37(h), which is a separate and distinct metric. As discussed above, consumer testing conducted by the Bureau indicates that consumers can use the “In 5 Years” disclosure to compare loans they are considering and that these disclosures increase consumers’ understanding of loan costs. *See* Kleimann Testing Report at 297-299. The Bureau believes, as it stated in the proposal, that one of the benefits of the modification to the calculation of Total of Payments is that consumers can identify and compare the components of the “In 5 Years” calculation, enhancing consumer understanding of the transaction. The Bureau also believes that the inclusion of the total loan costs in the “In 5 Years” disclosure will promote the informed use of credit and more effectively advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. Furthermore, the Bureau believes that to enable such identification of the components of the calculation, the loan costs cannot be included after subtracting out lender credits. Lender credits are disclosed in a separate section of the disclosure and are not factored into loan costs disclosed under § 1026.37(f). Accordingly, the Bureau believes such a disclosure would not be readily understandable and could be confusing to consumers.

In response to the comments received, the Bureau is amending comment 37(l)(1)(i)-1 to provide greater clarity regarding the calculation of the interest component of this disclosure for mortgage loans with multiple interest rates. In particular, in mortgage loans that are Adjustable Rate products under § 1026.37(a)(10)(i)(A), when creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, such as a discounted rate, the disclosure should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. Comment 37(l)(1)(i)-1 now cross-references comment 17(c)(1)-10 for purposes of reflecting the effect of multiple rates in the calculation of the "In 5 Years" disclosure, and clarifies that the interest calculation includes any prepaid interest. The Bureau has also amended comment 37(l)(1)(i)-1 to provide clarity with respect to the cross-reference to comment 37(c)(1)(i)(C)-1 for the definition of mortgage insurance under § 1026.37(l)(1)(i). The Bureau is also modifying comment 37(l)(1)(i)-2 to refer to the negative amortization loan feature under § 1026.37(a)(10)(ii)(A). The Bureau believes that referring to the product types and features under § 1026.37(a)(10) in comments 37(l)(1)(i)-1 and -2 will facilitate compliance. The Bureau is also amending comment 17(c)(1)-10.ii to clarify that the effect of the multiple rates must be reflected in the disclosures required under § 1026.37(l).

37(l)(2) Annual Percentage Rate

The Bureau's Proposal

TILA section 128(a)(4) and (8) requires creditors to disclose the annual percentage rate, together with a brief descriptive statement of the annual percentage rate.

15 U.S.C. 1638(a)(4), (a)(8). Current § 1026.18(e) implements these statutory provisions by requiring creditors to disclose the "annual percentage rate," using that term, and a brief description such as "the cost of your credit as a yearly rate." In addition, TILA section 122(a)

requires that the annual percentage rate be more conspicuous than other disclosures, except the disclosure of the creditor's identity. 15 U.S.C. 1632(a). This requirement is also implemented in current § 1026.18(e). As discussed above, concerns have been raised repeatedly over the last two decades that consumers are confused by what the APR represents and do not use it for its intended purpose: to compare loans. As discussed in the proposal and the Kleimann Testing Report, the Bureau's consumer testing similarly indicates consumer confusion regarding the APR disclosure and that consumers do not use the APR when comparing loans. *See* Kleimann Testing Report at 297-304.

Pursuant to its implementation authority under TILA section 105(a), the Bureau proposed § 1026.37(l)(2) to implement the requirements of TILA section 128(a)(4) and (8) for transactions subject to proposed § 1026.19(e) by requiring creditors to disclose the "annual percentage rate" and the abbreviation "APR," together with the following statement: "Your costs over the loan term expressed as a rate. This is not your interest rate." On the basis of its consumer testing and research that showed that consumers often confuse the APR with their contract interest rate, the Bureau included the sentence "This is not your interest rate." Further, in light of consumer confusion over the APR and the fact that consumers do not appear to use the APR in comparing loan offers, the Bureau proposed to exercise its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to except transactions subject to § 1026.19(e) from the requirement of TILA section 122(a) that the annual percentage rate disclosure be more conspicuous than other disclosures, except the disclosure of the creditor's identity.

Comments

In response to the proposal, some commenters suggested removing the APR disclosure since consumers find it confusing and do not use it. A trade association commenter, a consumer commenter, and a law firm commenter argued that the Bureau should use its authority under TILA sections 105(a) and (f) to exempt all residential mortgage loans from the disclosure requirements of the APR. A GSE, an industry commenter, and a consumer advocacy group commenter suggested that the Bureau formulate a better explanation of the APR than the one proposed, to help consumers understand that the APR reflects not only the interest rate but also the related cost of credit. These commenters stated that creditors consistently fail to understand and correctly explain the difference between the interest rate and the APR. One consumer commenter argued that the APR is not useful for an adjustable rate loan, and several industry commenters suggested that the Bureau provide additional clarity in terms of how to calculate the APR for adjustable rate mortgage loans.

Several industry trade association commenters favored the inclusion of APR and disfavored making any changes to how this disclosure is calculated. A consumer commenter supported the APR disclosure but suggested disclosing it as two separate items, similar to its disclosure for credit cards: (1) APR; and (2) all other fees. One industry commenter suggested that the finance charge used to calculate the APR should be disclosed appropriately to help consumers understand what charges are included in the APR.

Various consumer advocacy groups, civil rights and community organizations, and a real estate brokerage commenter argued that the decision to place the APR on page three of the Loan Estimate will make it less likely that consumers will understand or be able to compare the full cost of different mortgages. These commenters believed that placing the APR on page three would make it more likely that unscrupulous lenders will quote misleadingly low interest rates with high hidden fees. These commenters argued that the APR is the best tool for selecting the mortgage loan with the lowest cost of credit, and that Congress issued a clear and explicit mandate to make the APR one of the most conspicuous disclosures. These commenters cited to several studies that say that the majority of consumers use the APR to compare loans, and urged the Bureau to restore the APR to a prominent place on the first page of the Loan Estimate to make the information more noticeable to consumers. A group of 12 law professors stated that the APR better conveys the cost of a loan than the interest rate because it includes all credit-related fees, not just interest, and that the APR disclosure should be prominently displayed on the first page of the Loan Estimate. According to these commenters, minimizing the APR will also have the effect of driving mortgage brokers and lenders to increase closing costs and other fees, since consumers will be focused on the interest rate, but if consumers learn to shop based on APR, the competition will drive down fees.

A law professor and an associate professor of cognitive psychology submitted an ex parte communication that included a study using a form similar to the Bureau's proposed Loan Estimate. These professors stated that their study found that, with the Bureau's proposed Loan Estimate, only 44 percent of their participants correctly identified the lower cost loan. By contrast, they noted that 74 percent of their participants correctly identified the lower cost loan when they revised the form to present the APR prominently on the first page of the form, with a price tag symbol and simple explanation of how to use the APR. These professors concluded that consumers could use the APR to identify lower cost loans, even without understanding it, if the Bureau were to place the APR in a simple and more prominent format on the first page of the Loan Estimate, along with a statement that lower values are better for consumers, and suggested that the Bureau should modify the Loan Estimate accordingly.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.37(l)(2) as proposed. The Bureau notes that the APR is a long-standing measure designed to provide consumers a way of measuring the total cost of credit and comparing loan products. As discussed above, consumer testing conducted by the Board and the Bureau, and comments received by the Bureau, consistently indicate consumer confusion over the APR. When the Bureau added the statement "this is not your interest rate" to the descriptive explanation of the APR during its consumer testing, although confusion was reduced, participants still did not understand how to use the APR. *See* Kleimann Testing Report at 303-304. Instead, participants used measures they readily understood, such as the maximum interest rates, maximum periodic payments, and closing cost details to evaluate, compare, and verify loan terms. Participants were able to use these measures to evaluate and compare loans, making sophisticated trade-offs, often based on rationales involving their personal circumstances. In light of these comments concerning consumer confusion over the APR and the fact that consumers do not appear to use the APR in comparing loan offers, the Bureau is exercising its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to exempt transactions subject to § 1026.19(e) from the requirement of TILA section 122(a) that the annual percentage rate disclosure be more conspicuous than other disclosures, except the disclosure of the creditor's identity.

The Bureau believes that the exemption will enhance consumer understanding by separating the APR disclosure from the interest rate disclosure, which could prevent consumer confusion over the two rates and reduce the possibility of information overload for consumers attempting to compare loan terms, consistent with the purposes of TILA. The Bureau believes that grouping the APR with the "In 5 Years" and Total Interest Percentage disclosures will also enhance consumer understanding by emphasizing that the APR is a special metric created specifically for comparison purposes, which may help consumers compare the total costs over the life of the loan. In addition, the purpose of the integrated disclosures under TILA section 105(b) and RESPA section 4(a) is to "aid the borrower…in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures." The Bureau believes that placing measures that are readily understandable to consumers on the first page of the Loan Estimate, and complex measures that consumers find confusing on latter pages, meets this statutory objective.

The Bureau has also considered the factors in TILA section 105(f) and has determined that an exemption is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. As discussed above, consumer testing and historical research indicate that consumers do not understand the APR and do not use it when shopping for a loan. Highlighting the APR on the disclosure form contributes to overall consumer confusion and information overload, complicates the mortgage lending process, and hinders consumers' ability to understand important loan terms.

As such, the Bureau has determined that the exemption from the requirement that the APR be disclosed more conspicuously than other disclosures will not undermine the goal of consumer protection but, instead, will improve consumer understanding of the loans. For all these reasons, the Bureau has determined that the disclosure in a less prominent place than is required under TILA section 122(a) will improve consumer awareness and understanding of residential mortgage loans. The Bureau has also determined that the exemption is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b), and that, consistent with section 1032(a) of the Dodd-Frank Act, the exemption would ensure that the features of consumer credit transactions secured by real property 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.

Regarding the concern expressed by commenters regarding the placement of the APR on the final page of the Loan Estimate and, as discussed below, on the final page of the Closing Disclosure, and the suggestions that the APR disclosure can be improved through an all-in APR, better descriptive language of the APR, or by supplementing the APR with other disclosures, the Bureau believes that its disclosure of the APR improves upon the current disclosure on the TILA disclosures. As noted above, consumer advocacy groups recommended that the APR be more prominent than the interest rate on the Loan Estimate and be disclosed in a graphic format. In addition, two professors recommended that the Bureau place the APR in a simple and more prominent location and format on the first page of the Loan Estimate and state that lower values are better for consumers, based upon a study they conducted.[280] The Bureau has considered

[280] The examples that were tested by the professors do not appear to be typical of the loans a consumer would be presented with in an actual transaction. For example, the scenario involved a refinance transaction in which the payoff amounts of the loans being satisfied differed by approximately $5,000. In addition, the statement placed on the study's prototype disclosures that states that a lower APR amount is better may be inaccurate for consumers in certain situations. For example, whether a certain makeup of interest rate and upfront fees in a transaction would be less expensive for a consumer would depend on the facts specific to a particular transaction, such as the length of time the new loan would be held by the consumer. Debra Stark et al., *When is Consumer Understanding Necessary*

these comments, but based on past research showing that consumers are confused by the APR, the Board's prior efforts to improve the APR disclosure, and the Bureau's testing of various descriptive statements of the APR, described above, the Bureau believes that the final rule's approach to the APR will provide important benefits to consumers by emphasizing the difference between the APR and the contract interest rate. Further, the Bureau's Quantitative Study showed that the proposed forms performed better than the current forms with respect to consumers identifying and comparing APRs. Indeed, at the Bureau's Quantitative Study, consumers using the Bureau's integrated disclosures performed statistically significantly better than those using the early TILA disclosure statement and RESPA GFE at identifying the APR. Question 23 of the questionnaire used in the Quantitative Study asked the consumer respondents in the study, "[w]hat is the Annual Percentage Rate (APR) for this loan?" For the consumers using the Bureau's integrated disclosures, 79.5 percent gave the correct answer to this question, while for consumers using the early TILA disclosure statement and RESPA GFE, only 65.7 percent gave the correct answer, a difference of 13.8 percentage points, which is statistically significant. *See* Kleimann Quantitative Study Report at 45 and 50-51. The Bureau is, however, improving the APR disclosure through a descriptive statement that clearly distinguishes the APR from the interest rate. The Bureau may also develop supplemental educational materials in booklets and its website that will further explain how the APR differs from the interest rate, how it provides a good way of comparing the entire costs of the loan over the entire term, and why consumers may want to use both the "In 5 Years" and APR figures to think about their financial futures.

As discussed above, several commenters were confused about how to calculate the APR

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to Make Wise Home Loan Decisions? Testing Enhanced APR Disclosure And General Financial Literacy (2013), available at http://ssrn.com/abstract=2294590 or http://dx.doi.org/10.2139/ssrn.2294590.

for adjustable rate loans. The Bureau is amending comment 17(c)(1)-10.ii, as described in the section-by-section analysis of § 1026.17(c) above, to clarify that the effect of the multiple rates must be reflected in certain of the disclosures required under § 1026.37(l), but the Bureau notes that this does not change the current underlying methodology for calculating the APR. For additional guidance regarding the calculation of the APR for closed-end transactions, see the commentary to § 1026.17, as amended by this final rule. The Bureau is not adopting suggestions made by other commenters such as to disclose the APR as it is disclosed for credit cards, to itemize the finance charge, or to use a different description. Consumers who participated in the Bureau's consumer testing found the APR less confusing with the description the Bureau used at its consumer testing which informed consumers that the APR was a different figure than the contract interest rate. *See* Kleimann Testing Report at 303-304.

37(l)(3) Total Interest Percentage

The Bureau's Proposal

The Dodd-Frank Act amended TILA to add new section 128(a)(19), which requires that, in the case of a residential mortgage loan, the creditor disclose the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. That section also requires that the disclosure be computed assuming the consumer makes each monthly payment in full and on time, and does not make any over-payments.

The Bureau proposed § 1026.37(l)(3) to implement TILA section 128(a)(19) by requiring creditors to disclose the total interest percentage, using that term and the abbreviation "TIP," and requiring creditors to disclose the descriptive statement "The total amount of interest that you will pay over the loan term as a percentage of your loan amount." Proposed § 1026.37(l)(3) also would have provided that the "total interest percentage" is the total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the principal of the loan. Proposed comments 37(l)(3)-1 through -3 would have provided further guidance to creditors on the calculation of the total interest percentage. Proposed comment 37(l)(3)-1 would have provided that, when calculating the total interest percentage, the creditor assumes that the consumer will make each payment in full and on time, and will not make any additional payments. Proposed comment 37(l)(3)-2 would have provided that, for adjustable rate mortgages, § 1026.37(1)(3) requires that the creditor compute the total interest percentage using the fully-indexed rate and that, for step-rate mortgages, § 1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with § 1026.17(c)(1) and its commentary. Proposed comment 37(l)(3)-3 would have provided that, for loans that permit negative amortization, § 1026.37(l)(3) requires that the creditor compute the total interest percentage using the minimum payment amount until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

Notwithstanding the proposed modifications, the Bureau was concerned that the total interest percentage may not be a useful tool for consumers and could create confusion and contribute to information overload. In light of these concerns, the Bureau alternatively proposed to use its exception and modification authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt transactions subject to proposed § 1026.19(e) and (f) from the requirements of TILA section 128(a)(19). The Bureau solicited comment on the proposed exemption and, alternatively, on whether the Bureau should implement the total interest percentage disclosure only in the Closing Disclosure.

Comments

In response to the proposal, industry commenters generally urged the Bureau to use its exception authority to remove the disclosure. They generally asserted that the disclosure would not be useful to consumers, that consumers would be confused by it, and that the disclosure would trigger information overload. For these same reasons, some commenters suggested that the Bureau should only require the disclosure in the Closing Disclosure. A number of commenters additionally asserted that the disclosure would alarm consumers when they see how much they would be paying in interest. Industry commenters further asserted that the disclosure would create compliance burden because it would be difficult to calculate and explain. Several industry trade association commenters recommended that the Bureau provide additional clarification as to the calculation and meaning of the Total Interest Percentage disclosure if the Bureau decides to keep the disclosure.

A number of industry commenters observed that the disclosure would be inaccurate for any loan paid off before maturity and for adjustable rate mortgage loans. They expressed concern that consumers could be misled by a potentially inaccurate metric. Several industry trade association commenters sought clarification as to whether the calculation of this disclosure would use the actual initial interest rate or the fully-indexed rate, and whether it assumes that payments increase as fast as possible.

On the one hand, many industry commenters also argued that if the Bureau decides to finalize the disclosure, disclosing the total interest amount in the form of a number rather than as a percentage would be more comprehensible. On the other hand, a number of industry commenters suggested that disclosing a number for the total interest amount is unnecessary because of the Finance Charge disclosure in the Closing Disclosure.

A consumer commenter strongly favored the Total Interest Percentage disclosure and some industry commenters did not object to its inclusion. An association of various State regulators and a joint letter from several consumer advocacy groups did not recommend that the Bureau remove the disclosure, but expressed concern that the disclosure could mislead consumers about the cost of credit because the calculation would not include closing costs or prepaid finance charges. Two industry trade associations representing consumer financial services providers recommended that prepaid interest be excluded from the calculation.

Lastly, a national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 128(a)(19) and any regulations promulgated thereunder.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.37(l)(3) and comments 37(l)(3)-1 as proposed. As discussed above, some commenters generally urged the Bureau to use its exception authority to remove the disclosure and asserted that the disclosure would not be useful to consumers, that consumers would be confused by it, and that the disclosure would trigger information overload. Some commenters also argued that disclosing the total interest amount in the form of a number rather than as a percentage would be more comprehensible. The Bureau's consumer testing, however, indicated that consumer participants generally understood the basic concept of the disclosure, even though they did not understand its more technical aspects. Although some consumers did not understand the disclosure at all and questioned why it was included, the Kleimann Testing Report concluded that participants understood the basic concept of total interest as a percentage of principal, and that most participants used the disclosure to achieve a more complete understanding of the loan. Kleimann Testing Report at 299-300. Some commenters asserted that the disclosure would alarm consumers when they see how much they would be paying in interest. However, the Kleimann Testing Report stated that most participants used the TIP to compare loans in the Loan Estimate, choosing the lower percentage as the better loan, and that they used the TIP as a measure of what they would pay in interest in the Closing Disclosure. The Kleimann Testing Report further indicated that participants expressed surprise upon seeing the TIP and realizing how much interest they would pay for their mortgage loans and appreciated the disclosure for this effect. *See* Kleimann Testing Report at 299-300. Concerns were also raised during the Bureau's Small Business Review Panel,[281] by industry in feedback provided in response to the Small Business Review Panel Outline, in feedback received through the Bureau's website during the Know Before You Owe initiative, and in comments received that the TIP could be difficult to calculate and explain to consumers, and would not likely be helpful to consumers. However, several industry participants in the Bureau's consumer testing thought it would be helpful to consumers. *See* Kleimann Testing Report at 299-300. In addition, the Bureau's consumer testing indicated that consumers generally understood the disclosure. *See* Kleimann Testing Report at 299-300.

As discussed above, several industry trade association commenters recommended that the Bureau provide additional clarification as to the calculation and meaning of the TIP disclosure. In light of the Bureau's consumer testing of the TIP disclosure and the concerns about consumers' ability to understand the disclosure, the Bureau is requiring creditors to disclose the

[281] *Final Report of the Small Business Review Panel on CFPB's Proposals Under Consideration for Integration of TILA and RESPA Mortgage Disclosure Requirements* (Apr. 23, 2012), available at http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-sbrefa-feedback.pdf.

descriptive statement, “The total amount of interest that you will pay over the loan term as a percentage of your loan amount.” The Bureau adopts this pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Based on consumer testing, the Bureau believes that consumer understanding of the TIP disclosure may be enhanced through the descriptive statement of the TIP, consistent with the purposes of TILA, and that the descriptive statement is in the interest of consumers and the public, consistent with section 1405(b) of the Dodd-Frank Act. For these reasons, the Bureau also believes that the disclosure of the descriptive statement regarding the TIP may ensure that the features of consumer credit transactions secured by real property 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, consistent with section 1032(a) of the Dodd-Frank Act.

In response to the comments received that raised concerns about calculations for adjustable rate mortgage loans, the Bureau is revising proposed comment 37(l)(3)-2 to provide further guidance to creditors on the calculation of the total interest percentage for adjustable rate mortgage loans, clarifying that for such transactions, the total interest percentage is calculated in accordance with comment 17(c)(1)-10. In particular, for an Adjustable Rate product under § 1026.37(a)(10)(i)(A), when creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosure should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. For purposes of § 1026.37(1)(3), comment 37(l)(3)-2 additionally clarifies that for Step Rate products under § 1026.37(a)(10)(i)(B), the creditor computes the total interest percentage in accordance with § 1026.17(c)(1) and its commentary. The Bureau is also amending proposed comment 17(c)(1)-10.ii to clarify that the effect of the multiple rates must be reflected in certain of the disclosures required under § 1026.37(l), including the TIP, as described in the section-by-section analysis of § 1026.17(c). The Bureau is revising proposed comment 37(l)(3)-3 to refer to loans that have negative amortization loan features under § 1026.37(a)(10)(ii)(A). The Bureau believes that referring to the product types and features under § 1026.37(a)(10) in comments 37(l)(3)-2 and -3 will facilitate compliance.

In response to several comments received that sought clarification on whether prepaid interest is included, the Bureau notes that prepaid interest is included in the TIP calculation. Section 1026.37(l)(3) requires that the calculation include the total amount of interest that the consumer will pay over the life of the loan, which includes prepaid interest.

With respect to the argument that the disclosure should not apply to timeshare lenders, the general section-by-section analysis of § 1026.19 provides a more detailed discussion of the Bureau's decision to expand the scope of some of the disclosure requirements set forth in TILA, as amended by the Dodd Frank Act. In addition, the Bureau believes that the disclosure of the total interest percentage would be just as useful to a consumer in a credit transaction secured by a consumer's interest in a timeshare plan as to a consumer in a credit transaction secured by an interest in real property or real property with a dwelling.

Accordingly, the Bureau has determined that the total interest percentage is a useful tool for consumers and has determined not to use its exception and modification authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt transactions subject to § 1026.19(e) and (f) from the requirements of TILA section 128(a)(19). The Bureau also believes that the TIP disclosure on the Loan Estimate will help ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, will improve consumer awareness and understanding of residential mortgage loans, and is in the interest of consumers and the public. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this final rule, the Bureau believes that an exemption is not appropriate.

Other Statutory Disclosures

As discussed above, the research regarding consumer comprehension and behavior and the results of the Board's and the Bureau's consumer testing suggest that an effective disclosure regime minimizes the risk of consumer distraction and information overload by providing only information that will assist most consumers. The Bureau therefore carefully evaluated each statutory element required under TILA for its usefulness to consumers and others at early stages of the loan process, during the real estate closing process, and as general reference information over the life of the loan. Based on that analysis, the Bureau proposed to use its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to except from and modify the timing requirements for certain disclosures required by TILA section 128. Specifically, those disclosures are: the amount financed (TILA section 128(a)(2)), the finance charge (TILA section 128(a)(3)), a statement that the creditor is taking a security interest in the consumer's property (TILA section 128(a)(9)), a statement that the consumer should refer to the appropriate contract document for information about his or her loan (TILA section 128(a)(12)), a statement regarding certain tax implications (TILA section 128(a)(15)), and the creditor's cost of funds (TILA section 128(a)(17)).

In response to the proposal, one industry commenter suggested that the Bureau should include the Total of Payments, Finance Charge, and Amount Financed disclosures on the Loan Estimate in order to more accurately reflect the loan's total cost and create more consistency between the Loan Estimate and Closing Disclosure. The Bureau has analyzed the feedback provided and has determined that the exemptions discussed above will carry out the purposes of TILA, consistent with TILA section 105(a), by avoiding consumer confusion and information overload, thereby promoting the informed use of credit, as discussed above. For these same reasons, the exemptions will help ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans and are in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

The Bureau has considered the factors in TILA section 105(f) and has determined that, for the reasons discussed above, an exemption is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this final rule, the Bureau has determined that the exemptions are appropriate. The exclusion of the finance charge and the amount financed from the Loan Estimate is discussed at length below.

Finance charge. TILA section 128(a)(3) and (8) requires creditors to disclose the "finance charge" and a brief descriptive statement of the finance charge. 15 U.S.C. 1638(a)(3), (a)(8). For transactions subject to RESPA, TILA section 128(b)(2)(A) requires creditors to provide this disclosure not later than three business days after the creditor receives the consumer's application, and at least seven business days before consummation. 15 U.S.C. 1638(b)(2)(A). Current § 1026.18(d) implements TILA section 128(a)(3) and (8) by requiring creditors to disclose the "finance charge," using that term, and a brief description such as "the dollar amount the credit will cost you." For transactions subject to RESPA, current § 1026.19(a) requires creditors to provide the finance charge disclosure not later than the third business day after the creditor receives the consumer's application.

Federal agency research has long recognized consumer confusion over the finance charge. The Board-HUD Joint Report found that TILA disclosures fall short of meeting their goal of informing consumers about the cost of credit, in part because of consumer confusion over the finance charge. Board-HUD Joint Report at III. Evidence of consumer confusion over the finance charge was echoed in the Board's 2009 Closed-End Proposal. 74 FR 43307-08 (Oct. 21, 2009). The Board's consumer testing indicates that consumers often fail to understand that the finance charge contains both interest and fees,[282] and that consumers place very little value on

[282] Macro 2009 Closed-End Report at 11, 41 (stating that, in Round 8 of the testing, "[m]ost [participants] thought the finance charges were equal to the amount of interest that the borrower would pay over time; only a few understood the finance charges shown on the form included fees as well as interest").

the finance charge when making decisions regarding their loan.[283] The report stated that "[testing] participants . . . generally disregarded the finance charge when reading their TILA statements."[284] In addition, FTC staff conducted a study evaluating prototype mortgage disclosures in comparison to then-current TILA and REPSA disclosures, which indicated that consumers were confused by the finance charge disclosure on the TILA disclosures.[285]

For these reasons, the Bureau is exercising its authority under TILA section 105(a) and (f) and Dodd-Frank sections 1032(a) and, for residential mortgage loans, 1405(b), to except transactions subject to proposed § 1026.19(e) from the requirements of TILA section 128(a)(3) and (8) as it applies to the Loan Estimate provided to consumers within three business days of application. As discussed above, the Bureau has determined that the exclusion of the finance charge disclosure from the Loan Estimate effectuates the purposes of TILA by avoiding consumer confusion and information overload historically associated with the finance charge disclosure, thereby improving the informed use of credit.

The Bureau has considered the factors in TILA section 105(f) and has determined that, for the reasons discussed above, an exemption is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the

[283] For example, only one of the nine participants in one round of the Board's testing found the finance charge useful. *Id*. at 35. In another round, most participants said that they would not use the finance charge in their decision-making. *Id*. at 28.
[284] *Id*. at 41.
[285] James Lacko & Janis Pappalardo, Fed. Trade Comm'n Bureau Econ. Staff Report, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms* at 30, 37 (2007) available at http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf (finding that respondents in the study were confused by the finance charge disclosure).

principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed above, the Bureau has determined that an exemption is appropriate.

Although one industry commenter believed the finance charge should be included on the Loan Estimate, the Bureau does not believe that disclosure of the finance charge on the Loan Estimate provides a meaningful benefit to consumers in the form of useful information or protection. Rather, disclosure of the finance charge to consumers early in the lending process actually complicates and hinders the process of mortgage lending because consumers do not understand the disclosure. Removing the finance charge disclosure from the Loan Estimate that consumers receive early in the lending process may assure meaningful disclosure of credit terms, facilitate consumer comparison of credit terms, and improve the informed use of credit by avoiding information overload and improving consumer understanding of loan terms, consistent with the purposes of TILA and with section 1405(b) of the Dodd-Frank Act. As consumer testing indicates that consumers generally do not use the finance charge when shopping for a loan, the absence of the finance charge from the Loan Estimate should not detract from consumers' understanding of their credit terms but, instead, will permit consumers to focus on other important terms. In addition, consistent with Dodd-Frank Act section 1032(a), removal of the finance charge from the Loan Estimate would help ensure that the features of consumer credit transactions secured by real property 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.

The Bureau recognizes that creditors, consumer advocates, and State and Federal supervisory agencies use the finance charge when calculating or verifying the calculation of the APR, determining compliance with certain price thresholds, and for a range of other purposes, including the right of rescission pursuant to TILA section 125. 15 U.S.C. 1635. Accordingly, to preserve the finance charge disclosure for these purposes, § 1026.38(o)(2) requires creditors to disclose the finance charge on the Closing Disclosure provided to consumers at least three days prior to consummation. Although concerns regarding consumer distraction and information overload persist at the stage of the transaction where the consumer receives the Closing Disclosure, the Bureau believes that disclosing the finance charge with other loan calculations on the final page of the Closing Disclosure as a general reference for the consumer after closing will mitigate these concerns. In addition, though the finance charge is not disclosed on the Loan Estimate, creditors must, in order to comply with the record retention requirements in § 1026.25, document the finance charge used to calculate the APR disclosed on the Loan Estimate. As discussed above, the Bureau is adopting conforming amendments to § 1026.22 to reflect the accuracy standards applicable to the finance charge disclosed on the Closing Disclosure under § 1026.38(o)(2). The Bureau is also adopting conforming amendments to § 1026.22 to reflect the accuracy standards applicable to the finance charge used in the APR calculation for the Loan Estimate under § 1026.37(l)(2).

Amount financed. TILA section 128(a)(2) and (8) requires creditors to disclose the "amount financed," using that term, and a brief descriptive statement of the amount financed. 15 U.S.C. 1638(a)(2), (a)(8). Current § 1026.18(b) implements this requirement and requires creditors to disclose the amount financed, using that term, together with a brief description that the amount financed represents the amount of credit of which the consumer has actual use. Like the finance charge disclosure, for transactions subject to RESPA, TILA section 128(b)(2)(A) requires that creditors provide a good faith estimate of this disclosure not later than three business days after the creditor receives the consumer's application, and at least seven business days before consummation. 15 U.S.C. 1638(b)(2)(A). This requirement is implemented in current § 1026.19(a).

Like the finance charge disclosure, research has indicated that the amount financed disclosure appears to confuse consumers. The Board-HUD Joint Report recommended removing the amount financed disclosure from consumer disclosures altogether because it "is probably not a useful disclosure for mortgage lending."[286] The Board-HUD Joint Report found that the primary use of the amount financed disclosure is to help supervisory agencies confirm APR calculations, and is not a useful shopping tool for consumers.[287] The Board's consumer testing in connection with the 2009 Closed-End Proposal also indicated consumer confusion about the amount financed disclosure. Some testing participants incorrectly assumed that the amount financed disclosure was their loan amount or the sale price of the home.[288] Based on this testing, the Board concluded that the amount financed disclosure detracted from, rather than enhanced,

[286] Board-HUD Joint Report at 16.
[287] *Id*. at 17.
[288] Macro 2009 Closed-End Report at *v*. For example, in Round 8 of testing, participants were "confused about the difference between the 'loan amount' and the 'amount financed.'" *Id.* at 26. In Round 9, participants gave a variety of incorrect explanations of the term, including that it was "how much escrow they would have," the amount they would have to pay back, or the amount that they borrowed. *Id.* at 35. In both of these rounds, some participants believed the amount financed disclosure was equal to the amount of money they would be borrowing. *Id.* at 40. In Round 11, the amount financed disclosure was moved to the second page, under the heading "Total Payments" in the "More Information About Your Payments" section. *Id.* at 51. As in previous rounds, no participant was able to explain the meaning of the amount financed disclosure. *Id.* at 55. In Round 12, with the amount financed disclosure in the same place on the second page, two participants incorrectly believed they were borrowing the "amount financed." *Id.* at 55. In the final round of testing, none of the participants understood the meaning of the amount financed disclosure. *Id.* at 72.

consumers' understanding of other disclosures[289] and that consumers "would not consider the amount financed when shopping for a mortgage or evaluating competing loan offers."[290] The Board also found that "requiring creditors to disclose the amount financed in the loan summary with other key loan terms would add unnecessary complexity and result in 'information overload.'"[291]

For these reasons, the Bureau is exercising its authority under TILA section 105(a) and (f), Dodd-Frank section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to modify and except transactions subject to proposed § 1026.19(e) from the requirements of TILA section 128(a)(2) and (8) as it applies to the Loan Estimate provided to consumers within three business days of application. As discussed above, the Bureau has determined that the exclusion of the amount financed disclosure from the Loan Estimate effectuates the purposes of TILA by avoiding consumer confusion and information overload historically associated with the disclosure, thereby improving the informed use of credit. In addition, the Bureau has considered the factors in TILA section 105(f) and has determined that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance,

[289] 74 FR 43232, 43308 (Aug. 26, 2009). For example, "sample disclosures were used to try to explain that the difference between the loan amount and amount financed is attributable to prepaid finance charges, but this explanation did not appear to improve consumer comprehension." *Id.*
[290] *Id.*
[291] *Id.*

the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the findings of the Board-HUD Joint Report, and the analysis discussed above, the Bureau has determined that an exemption is appropriate.

As discussed above, one industry commenter suggested that the Bureau should add the amount financed disclosure to the Loan Estimate. The Bureau does not believe, however, that disclosure of the amount financed on the Loan Estimate provides a meaningful benefit to consumers in the form of useful information or protection. Rather, the Bureau believes that disclosure of the amount financed to consumers early in the lending process actually complicates and hinders the process of mortgage lending because consumers do not understand the disclosure. Removing the amount financed from the Loan Estimate may improve the informed use of credit by avoiding information overload and improving consumer understanding of loan terms, consistent with the purposes of TILA and will be in the interest of consumers and the public, consistent with section 1405(b) of the Dodd-Frank Act. Enhanced consumer understanding of mortgage transactions is also in the interest of consumers and the public. In addition, consistent with Dodd-Frank Act section 1032(a), removal of the amount financed from the Loan Estimate may help ensure that the features of consumer credit transactions secured by real property 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.

However, the Bureau recognizes that, like the finance charge, the amount financed is commonly used by creditors and supervisory agencies for compliance purposes, as well as by consumer advocates. Therefore, under the final rule, creditors would be required to disclose the amount financed in the Closing Disclosure provided to consumers at least three business days prior to consummation. Like the finance charge, the Bureau believes that disclosing the amount financed with other loan calculations on the final page of the Closing Disclosure as a general reference for the consumer after closing will mitigate concerns about consumer distraction and information overload at the Closing Disclosure stage.

37(m) Other Considerations

Under § 1026.37(m), the Bureau proposed to require creditors to disclose certain information pertaining to: (1) the consumer's right to receive copies of appraisals; (2) future assumability of the loan; (3) at the creditor's option, homeowner's insurance requirements; (4) the creditor's late payment policy; (5) loan refinancing; (6) loan servicing, and (7) in refinance transactions, the consumer's liability for deficiency after foreclosure. This information would have been provided under the master heading "Additional Information About This Loan" required by § 1026.37(k) and under the heading "Other Considerations."

The Bureau stated in the proposal that consumers already receive most of these disclosures at or after application or prior to consummation, and that by incorporating all of these disclosures into the Loan Estimate, the proposed rule would reduce the number of separate disclosures that consumers receive. The Bureau stated that under the proposed rule, consumers would receive these disclosures in a single, integrated document, which would reduce the potential for information overload, promote the informed use of credit by the consumer, and facilitate compliance by industry. The Bureau did not receive any comments on proposed § 1026.37(m) and is adopting it as proposed.

37(m)(1) Appraisal

Prior to the Dodd-Frank Act, ECOA section 701(e) required creditors to provide to applicants, upon written request, a copy of the appraisal report used in connection with the consumer's application for a loan secured by a lien on residential real property. Section 1474 of the Dodd-Frank Act amended ECOA section 701(e) to remove the provision requiring consumers to request a copy of their appraisal. That section now requires the creditor to provide the consumer with a copy of any written appraisal or valuation developed in connection with an application for a loan that is or will be secured by a first lien on a dwelling promptly upon completion, and no later than three days prior to the closing of the loan, even if the creditor denies the consumer's application or the application is incomplete or withdrawn. 15 U.S.C. 1691(e)(1). Under ECOA section 701(e)(5), the creditor must notify the consumer in writing at the time of application of the right to receive a copy of any appraisal or valuation. 15 U.S.C. 1691(e)(5).

In addition, section 1471(a) of the Dodd-Frank Act added to TILA new appraisal requirements for higher-risk mortgages. Specifically, new TILA section 129H(c) requires creditors to provide consumers, at least three days prior to closing, a copy of any appraisal prepared in connection with a higher-risk mortgage. 15 U.S.C. 1639h(c). Section 1471(f) of the Dodd-Frank Act defines the term "higher-risk mortgage" generally as a residential mortgage loan, other than a reverse mortgage, that is secured by a principal dwelling with an APR that exceeds the average prime offer rate for a comparable transaction by a specified percentage. 15 U.S.C. 1639h(f). Section 1471 also allows for interagency rules to adopt exemptions for transactions, which would not be subject to the implementing regulations. New TILA section 129H(d) contains a disclosure requirement that creditors must provide consumers, at the time of the initial mortgage application, a statement that any appraisal prepared for the mortgage is for the creditor's sole use and that the consumer may choose to have a separate appraisal conducted at his or her own expense. 15 U.S.C. 1639h(d).

The Bureau proposed to use its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a) to include on the Loan Estimate disclosure of the new requirements regarding the consumer's right to appraisal copies for loans subject to ECOA section 701(e)(5) or TILA section 129H(c) and (d). In the proposal, the Bureau stated its intent to harmonize this proposal with its rulemaking implementing amended ECOA section 701(e) and the interagency rulemaking implementing new TILA section 129H(c) and (d), so that creditors may satisfy the ECOA section 701(e)(5) and TILA section 129H requirements in a single disclosure. The Bureau stated its belief in the proposal that including these appraisal disclosures on the Loan Estimate is consistent with the purposes of TILA and would reduce burden on industry. The Bureau stated its belief that because consumers would receive one integrated disclosure rather than a separate appraisal disclosure in addition to the Loan Estimate they would receive after application, the proposal would facilitate compliance for creditors and promote the informed use of credit by consumers, and ensure effective disclosure to consumers, consistent with the purposes of TILA section 105(a).

In addition, the Bureau also stated its belief that incorporating the appraisal disclosures into the Loan Estimate in a way that is consistent with the presentation of other disclosures would ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Since the proposal, the Bureau has issued the 2013 ECOA Appraisals Final Rule, 78 FR 7215 (Jan. 31, 2013) to implement ECOA section 701(e) as amended by the Dodd-Frank Act. In addition, the Bureau, the Department of the Treasury, the

Board, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Federal Housing Finance Agency have issued the 2013 Interagency Appraisals Final Rule, 78 FR 10367 (Feb. 13, 2013), to implement new TILA section 129H(c) and (d). The disclosure proposed in §1026.37(m)(1) is generally consistent with the disclosure standards adopted in these two rulemakings and would have satisfied the requirements of them both.

Proposed § 1026.37(m)(1) would have applied only to closed-end credit transactions subject to proposed § 1026.19(e) and ECOA section 701(e) or TILA section 129H, as implemented in Regulation B, 12 CFR part 1002, and Regulation Z, respectively. For such transactions, proposed § 1026.37(m)(1) would have required the disclosure under the label "Appraisal." Proposed § 1026.37(m)(1)(i) would have required the disclosure to state that the creditor may order an appraisal to determine the value of the property that is the subject of the transaction and may charge the consumer the cost for any such appraisal. Proposed § 1026.37(m)(1)(ii) would have required the disclosure to state that the creditor will promptly provide the consumer a copy of any completed appraisal, even if the transaction is not consummated. Finally, proposed § 1026.37(m)(1)(iii) would have required the disclosure to state that the consumer has the right to order an additional appraisal of the property for the consumer's own use. Proposed comment 37(m)(1)-1 would have clarified that if a transaction subject to proposed § 1026.19(e) is not also subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively, the disclosure required by proposed § 1026.37(m)(1) may be omitted from the Loan Estimate.

A large bank criticized proposed § 1026.37(m)(1)(i) because section 1471(a) of the Dodd Frank Act requires that a disclosure that "the appraisal prepared for the mortgage is for the sole use of the creditor, and the applicant may choose to have a separate appraisal conducted at the expense of the applicant" and proposed § 1026.37(m)(1)(i) leaves out this critical first clause. The commenter stated that the omission could be a source of consumer confusion. A regional trade association representing banks commented that the required disclosure proposed in § 1026.37(m)(1)(ii) should make clear that the creditor may not have an appraisal to provide if the transaction is not consummated. A regional trade association representing banks expressed concern that the statement required by § 1026.37(m)(1)(iii) may cause consumers to believe that the creditor would consider the appraisal ordered by the consumer which the creditor may not do pursuant to other Federal laws and regulations. The commenter stated that the omission could be a source of consumer confusion.

With respect to the comment that the disclosure required by proposed § 1026.37(m)(1)(i) leaves out the first clause of section 1471(a) of the Dodd Frank Act stating that the appraisal prepared for the mortgage is for the sole use of the creditor, the Bureau believes that the statement required by § 1026.37(m)(1)(i) effectively informs the consumer that the appraisal is for the creditor. The Bureau has designed the statement to use plain language to convey this concept to consumers. Accordingly, the statement required by proposed § 1026.37(m)(1)(i), as illustrated by proposed form H-24 of appendix H to Regulation Z, states "we may order an appraisal to determine the property's value and charge you for this appraisal." The Bureau does not believe that adding the term "sole use of the creditor" would make the disclosure more effective, and on the contrary, because of its technical nature, may decrease the level of engagement of consumers with the statement. The Bureau has conducted extensive consumer testing of prototype disclosure statements for these statutory appraisal notices. The proposed statement performed better than prototype statements that included language that directly addressed this clause. The Bureau tested a clause with consumers that stated, "any appraisal we order for this loan is for our use only, even if we charge you the cost." This clause caused consumer confusion regarding the right to obtain a copy of the appraisal, because consumers believed this statement meant they would not be able to see the appraisal.[292] Accordingly, the Bureau has determined the proposed statement more effectively conveyed the right to a copy of the appraisal and the creditor's use of the appraisal ordered by the creditor. Moreover, changing the disclosure proposed in § 1026.37(m)(1)(i) would render it inconsistent with the disclosures adopted in the 2013 ECOA Appraisals Final Rule and the 2013 Interagency Appraisals Final Rule and undermine the intent of the proposal to harmonize the appraisal disclosure in the integrated disclosures with the Bureau's other rulemakings.

With respect to the comment that the statement under § 1026.37(m)(1)(ii) should make clearer that the creditor may not have an appraisal for the transaction, the Bureau notes that the disclosure, as illustrated on form H-24, states that the creditor "may" order an appraisal. The Bureau believes that this conditional language is sufficient to put a consumer on notice that an appraisal may not be ordered in every instance (such as where a transaction is not completed) and thus, the consumer may not receive a copy of such appraisal.

Regarding the comment that consumers may believe that the creditor would consider the appraisal ordered by the consumer, the Bureau believes that the statement effectively conveys that the appraisal ordered by a consumer is for the consumer's use. The proposed statement, as illustrated by form H-24, states "you can pay for an additional appraisal for your own use at your own cost." Based on the Bureau's consumer testing, the Bureau believes the statement is understandable by consumers. In addition, for reasons discussed more fully in the 2013 ECOA Appraisals Rule, the Bureau does not believe that the concise, tested language in the sample

[292] *See* Kleimann Testing Report at 254-256.

disclosure should be expanded to discuss other Federal laws and regulations, which are complex and subject to varying interpretations. 78 FR 7215, 7228-9 (Jan. 31, 2013). For the aforementioned reasons, the Bureau is not revising the proposed appraisal notice pursuant to the comments.

However, for transactions subject only to the Interagency Appraisals Final Rule and not the ECOA Appraisals rule, the creditor is permitted to remove the word "promptly" from the disclosure pursuant to § 1026.35(c)(5)(i). 78 FR 10367, 10410-10412 (Feb. 13, 2013). Accordingly, to conform the appraisal notice in the integrated disclosures to these final rules, the Bureau is revising comment 37(m)(1)-1 to provide that for transactions subject to TILA section 129H, but not ECOA section 1691(e), the creditor may delete the word promptly from the disclosure required by § 1026.37(m)(1)(ii).

In addition, since the proposal was issued, the regulations implementing the Dodd-Frank Act's newly required appraisal notices have both been finalized. Neither of these regulations limits the requirement for the creditor to provide appraisals to "completed" appraisals. Indeed, the 2013 ECOA Appraisals Rule specifically states that a rule requiring only "final" versions to be provided would not be consistent with the statutory requirement, because it would allow creditors to withhold a valuation that they determine is a draft or preliminary even if they never receive a later version. 78 FR 7215, 7224 (Jan. 31, 2013) (citing comment 1002.14(a)(1)-7). Accordingly, the Bureau is revising § 1026.37(m)(1)(ii) to delete the word "completed." The statement illustrated by proposed form H-24 of appendix to Regulation Z would not have contained the word completed, and thus, is not being revised as such.

For the aforementioned reasons, the Bureau is adopting § 1026.37(m)(1)(i) and (iii) as proposed, based on the authority stated in the proposal. The Bureau is revising

§ 1026.37(m)(1)(ii) to delete the word "completed," to conform to the 2013 ECOA Appraisals Rule and the 2013 Interagency Appraisals Final Rule. The Bureau is also revising comment 37(m)(1)-1 as described above, to clarify that a creditor may delete the word "promptly" from the statement illustrated by form H-24 of appendix H to Regulation Z if it is subject to TILA section 129H, but not ECOA section 701(e). The Bureau is also adopting new comment 37(m)(1)-2 to clarify that the disclosure required by § 1026.37(m)(1) is as illustrated by form H-24, which contains the statement that the creditor will provide an appraisal even if the "loan does not close." The Bureau is further revising comment 37(m)(1)-1 to delete the reference to § 1026.37's permission that disclosures be made "as applicable" to conform with revisions to § 1026.37. Pursuant to § 1026.37(o)(3), the illustrated language is required even though § 1026.37(m)(1) refers to "consummation of the transaction." The Bureau has used the term "close" instead of the term "consummation" on the disclosures, because it is plain language, which the Bureau believes will be more understandable to most consumers. The Bureau adopts these revisions pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau believes these revisions will effectuate the purpose of TILA by promoting the informed use of credit and consistent with Dodd-Frank Act section 1405(b), will improve consumer awareness and understanding of residential mortgage loans.

37(m)(2) Assumption

TILA section 128(a)(13) requires the creditor to disclose, in any residential mortgage transaction, a statement indicating whether a subsequent purchaser may be permitted to assume the remaining loan obligation on its original terms. 15 U.S.C. 1638(a)(13). This provision is currently implemented in § 1026.18(q), and applies only to residential mortgage transactions. TILA section 103(x) defines "residential mortgage transaction" as a "transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of a dwelling." 15 U.S.C. 1602(x).

The Bureau proposed § 1026.37(m)(2) to implement TILA section 128(a)(13) for transactions subject to § 1026.19(e), pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). In addition, the Bureau proposed to modify the scope of TILA section 128(a)(13), pursuant to its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b), to apply to all transactions subject to proposed § 1026.19(e), even if not a "residential mortgage transaction" as defined in TILA section 103(x). The Bureau stated its belief in the proposal that consumers in transactions secured by real property would benefit from the disclosure, even if the property does not contain a dwelling. The Bureau stated that the proposed modification would promote the informed use of credit, consistent with the purposes of TILA; ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a); and would improve consumer awareness and understanding of residential mortgage loans, and be in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Transactions subject to the disclosure requirements of § 1026.18 would have continued to be subject to § 1026.18(q).

Proposed § 1026.37(m)(2) would have implemented TILA section 128(a)(13) for all transactions subject to § 1026.19(e) by requiring the creditor to disclose whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms. Proposed comment 37(m)(2)-1 would have clarified that the creditor must disclose whether or not a third party may be allowed to assume the loan on its original terms if the property is sold or transferred by the consumer. Proposed comment 37(m)(2)-1 also would have noted that in many mortgages, the creditor may be unable to determine whether the loan is assumable at the time the Loan Estimate is provided and cited to the GSEs as examples of entities that as a common practice condition assumability on a number of factors such as the subsequent borrower's creditworthiness. Further, proposed comment 37(m)(2)-1 would have clarified that, if the creditor can determine that such assumption is not permitted, the creditor complies with § 1026.37(m)(2) by disclosing that the loan is not assumable. In all other situations, including where assumption of a loan is permitted or is dependent on certain conditions or factors, or uncertainty exists as to the future assumability of a mortgage, the creditor complies with proposed § 1026.37(m)(2) by disclosing that, under certain conditions, the creditor may allow a third party to assume the loan on its original terms. Proposed comment 37(m)(2)-2 would have clarified that the phrase "original terms" as used in § 1027.37(m)(2) does not preclude an assumption fee but may represent different terms, and would have provided an example of a modified term.

An association of State regulators commented that the assumption disclosure, as proposed in § 1026.37(m)(2) for the Loan Estimate was inconsistent with that proposed in § 1026.38(l)(1), for the Closing Disclosure, as illustrated by proposed forms H-24 and H-25 of appendix H to Regulation Z, respectively. The Bureau believes that the consistent statements between the Loan Estimate and Closing Disclosure will aid consumer understanding. Accordingly, the Bureau is adopting § 1026.37(m)(2) as proposed, based on the authority stated in the proposal, but is revising the assumption disclosure on form H-24 for consistency with the Closing Disclosure, as described in the section-by-section analysis of appendix H to Regulation Z. The Bureau is adopting comments 37(m)(2)-1 and -2 substantially as proposed but with minor modifications for clarity.

37(m)(3) Homeowner's Insurance

TILA section 106(c) provides that premiums for homeowner's insurance written in connection with any consumer credit transaction shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom credit is extended may choose the insurance provider. 15 U.S.C. 1605(c). Current §§ 1026.4(d)(2)(i) and 1026.18(n) implement this provision.

The Bureau stated in the proposal that it understands that many creditors provide consumers the disclosure described in TILA section 106(c) and § 1026.4(d)(2)(i) in order to exclude homeowner's insurance premiums from the finance charge. The Bureau stated that to reduce the number of individual disclosures provided to consumers and facilitate compliance for creditors, the Bureau proposed § 1026.37(m)(3) which provides that, at the creditor's option, the creditor may disclose a statement of whether homeowner's insurance is required on the property and whether the consumer may choose the insurance provider, labeled "Homeowner's Insurance." Proposed comment 37(m)(3)-1 would have clarified that the disclosure required in § 1026.37(m)(3) is optional. Proposed comment 37(m)(3)-2 would have clarified that a creditor satisfies the condition for excluding homeowner's insurance premiums from the finance charge described in § 1026.4(d)(2)(i) by disclosing the statement described in § 1026.37(m)(3).

The Bureau proposed § 1026.37(m)(3) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau believes, as stated in the proposal, that combining the optional disclosure regarding homeowner's insurance premiums with the other disclosures on the Loan Estimate may avoid information overload and therefore promote the informed use of credit, consistent with the purposes of TILA. In addition, the Bureau believes, as stated in the proposal, that the proposed disclosure will help ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

A national trade association representing developers of timeshare properties commented that the homeowner's insurance disclosure is not applicable to timeshare transactions because the homeowners association for the timeshare resort typically pays for insurance on the property. As noted, the disclosure required by § 1026.37(m)(3) may be made at the creditor's option. Accordingly, to the extent that timeshare creditors believe the disclosure is inapplicable, they are free to omit it from the Loan Estimate. The Bureau continues to believe that § 1026.37(m)(3) will effectuate the purposes of TILA and is consistent with the Dodd-Frank Act section 1032(a) and 1405(b). Accordingly, the Bureau is adopting § 1026.37(m)(3) substantially as proposed but is making minor modifications for clarity and to reflect the disclosure on form H-24. The Bureau is adopting comment 37(m)(3)-1 as proposed and is adopting comment 37(m)(3)-2 substantially as proposed but with a minor modification for clarity.

37(m)(4) Late Payment

TILA section 128(a)(10) requires disclosure of "any dollar charge or percentage amount which may be imposed by a creditor solely on account of a late payment." 15 U.S.C. 1638(a)(10). This requirement is currently implemented in § 1026.18(l), which requires a statement detailing any "dollar or percentage charge that may be imposed before maturity due to a late payment."

The Bureau proposed § 1026.37(m)(4) to implement TILA section 128(a)(10) for transactions subject to § 1026.19(e), pursuant to its implementation authority under TILA section 105(a). In addition, the Bureau proposed to require creditors to disclose the number of days that a payment must be late to trigger the late payment charge pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau stated in the proposal that it believes that the additional disclosure enhances the late payment disclosure by describing the conditions that may trigger a late payment charge and therefore promotes the informed use of credit, consistent with the purpose of TILA. For this same reason, the Bureau stated its belief that the proposed disclosure would ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Proposed § 1026.37(m)(4) would have implemented TILA section 128(a)(10) for transactions subject to § 1026.19(e) and required the creditor to disclose a statement detailing any charge that may be imposed on the consumer for a late payment and the number of days a payment must be late before a penalty for late payment may be assessed. Proposed comment 37(m)(4)-1 would have clarified that the late payment disclosure is required if charges are added to an individual delinquent installment of a transaction that remains ongoing on its original terms. Proposed comment 37(m)(4)-1 also would have clarified which charges and creditor actions under the legal obligation do not qualify as a late payment charge and that an increase in the interest rate is a late payment charge to the extent of the increase. Comment 37(m)(4)-2 would have clarified that the creditor may make changes to the disclosure to reflect the requirements imposed and alternatives allowed under State law.

Two GSEs criticized the design of the Late Payment disclosure as proposed on form H-24 of appendix H to Regulation Z, stating it was inconsistent with other disclosures required by § 1026.37(m) because the information filled in by the creditor that is particular to the consumer’s transaction is not highlighted by a checkbox. The Bureau did not propose a format based on checkboxes for this disclosure in proposed form H-24 of appendix H based on its belief that the formula for a creditor’s charge for a late payment varies, although it is typically subject to limits under applicable law. However, the Bureau believes that placing additional emphasis on the variable information of the disclosure may aid consumer understanding, and thus, has illustrated such emphasis of this information using italics in form H-24 of appendix H to Regulation Z, as discussed in the section-by-section analysis of appendix H.

The Bureau did not receive any comments on the substance of proposed § 1026.37(m)(4) or its accompanying commentary. Accordingly, the Bureau is finalizing proposed § 1026.37(m)(4) and comments 37(m)(4)-1 and -2 as proposed, based on the authority stated in the proposal.

37(m)(5) Refinance

TILA section 128(b)(2)(C)(ii) requires that, for variable-rate transactions or transactions where the regular payment may otherwise be variable and that are secured by the consumer’s dwelling, the borrower be provided with a disclosure that there is no guarantee to refinance to a lower amount. Current § 1026.18(t) implements this provision by requiring creditors to disclose a statement that there is no guarantee that the consumer may refinance to lower the interest rate or monthly payment. Current § 1026.18(t) also expands the no-guarantee-to-refinance disclosure to apply to, not only variable-rate or variable-payment transactions, but all closed-end transactions secured by real property or a dwelling, other than transactions secured by the consumer's interest in a timeshare.

The Bureau proposed § 1026.37(m)(5) to implement TILA section 128(b)(2)(C)(ii) for transactions subject to proposed § 1026.19(e). Proposed § 1026.37(m)(5) would have required the disclosure of the following statement: "Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan." This statement was based on the results of several rounds of consumer testing. As discussed in the Kleimann Testing Report, consumers in the Bureau's consumer testing understood this language to mean that they are permitted to try to refinance their loan in the future, but that they may not be able to do so. *See* Kleimann Testing Report at 218, 225.

In implementing TILA section 128(b)(2)(C)(ii), the Bureau proposed to use its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b) to expand the requirement to all transactions subject to § 1026.19(e). The proposal stated that, like the Board, the Bureau was concerned that some consumers may accept loan terms that could present refinancing problems similar to those experienced by consumers in variable-rate or variable-payment transactions (*e.g.*, a three-year fixed rate mortgage with a balloon payment), and that all consumers would benefit from a statement that encourages consideration of possible future market rate increases on refinancing. *See* 2009 Closed-End Proposal, 74 FR 43310. The Bureau stated that it believed the proposed disclosure effectuates the purpose of TILA to help consumers avoid the uninformed use of credit. In addition, the Bureau stated its belief that the proposed disclosure would help to ensure that the features of mortgage transactions are fully and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with a financial product, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and would improve consumer awareness and understanding of residential mortgage loans, which is in is the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Transactions subject to the disclosure requirements of § 1026.18 would have continued to be subject to § 1026.18(t).

A national trade association representing developers of timeshare properties commented that the refinance disclosure is confusing for timeshare consumers because those transactions are rarely refinanced and thus the disclosure could mislead consumers into believing they could refinance. The Bureau disagrees that the disclosure as proposed would be confusing for timeshare consumers. Indeed, the disclosure required by § 1026.37(m)(5) notifies consumers that refinancing may not be possible, which is correct given that timeshares are typically not refinanced. The Bureau continues to believe that the disclosure required by § 1026.37(m)(5) will effectuate the purposes of TILA and is consistent with the Dodd-Frank Act sections 1032(a) and 1405(b). See the section-by-section analysis of § 1026.19 for a discussion regarding the Bureau's decision to extend the scope of certain disclosures required by the Dodd-Frank Act for "residential mortgage loans," as defined under Dodd-Frank Act section 1401, to transactions secured by a consumer's interest in a timeshare plan. Accordingly, the Bureau is adopting § 1026.37(m)(5) as proposed, based on the authority stated in the proposal.

37(m)(6) Servicing

RESPA section 6(a) requires disclosures to loan applicants concerning whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding. 12 U.S.C. 2605(a). Current appendix C to Regulation X implements RESPA section 6(a) and requires a statement in the RESPA GFE regarding loan servicing under the section "If your loan is sold in the future," albeit using relatively generic language that does not express the creditor's actual intent.[293] Proposed § 1026.37(m)(6) would have required a statement of whether the loan will be serviced by the creditor or transferred to another servicer, labeled "Servicing." Proposed comment 37(m)(6)-1 would have clarified that the disclosure required in proposed § 1026.37(m)(6) requires only that the creditor state its intent at the time the disclosure is issued.

For transactions subject to RESPA, the Bureau proposed § 1026.37(m)(6) to implement RESPA section 6(a), pursuant to its authority under RESPA section 19(a). For transactions subject to the requirements of proposed § 1026.19(e) but that are not subject to RESPA, the Bureau proposed to require creditors to provide the servicing disclosure described in § 1026.37(m)(6) pursuant to its authority under TILA section 105(a) and Dodd-Frank Act 1032(a). The Bureau believes, as stated in the proposal, that requiring the disclosure regarding loan servicing in these transactions will improve consumer understanding and avoid the uninformed use of credit, consistent with the purposes of TILA, and that the disclosure will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

A non-depository lender commenter stated that a lender does not typically know at the

[293] The standard RESPA GFE form in appendix C to Regulation X reads as follows: "Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement."

time the Loan Estimate is issued whether it intends to retain servicing of the loan or transfer it. Further, the commenter stated that under other applicable laws and regulations, a creditor need not disclose whether it has transferred servicing of the loan until after closing. The commenter suggested that the disclosure design include a third option where a creditor could disclose that it did not know whether it intended to service the loan.

The Bureau intended for the servicing disclosure to implement RESPA section 6(a), which only requires a notice of whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding. The Bureau intended that the proposal require, as illustrated by proposed form H-24 of appendix H to Regulation Z, only the disclosure of the creditor's intent. The Bureau believed such a disclosure would convey effectively the information required by RESPA section 6(a) and aid consumer understanding of the transaction. The Bureau, however, understands that proposed § 1026.37(m)(6) would have required a statement of whether the loan will or will not be serviced by the creditor, and does not in the regulatory text refer to the creditor's intent to service the loan. Accordingly, the Bureau is revising § 1026.37(m)(6) to refer specifically to the creditor's intent with respect to servicing the loan. The Bureau believes that, with the revision to the regulatory text, a third check box in form H-24, as suggested by the commenter, is unnecessary. If a creditor does not intend to service the loan, then it should select the checkbox that it does not intend to service the loan. The Bureau believes that if there is doubt regarding whether the creditor intends to transfer servicing, consumers will be better served by a disclosure that the creditor does intend to do so, in order that consumers are on notice about that possibility. The Bureau is adopting § 1026.37(m)(6) with a revision to require a statement of whether or not the creditor intends to service the loan. The Bureau is also revising comment 37(m)(6)-1 to change a reference from the closing of the loan to the consummation of the loan. The Bureau adopts § 1026.37(m)(6) and comment 37(m)(6)-1 as revised pursuant to its authority under RESPA sections 6(a) and 19(a), TILA section 105(a), and Dodd-Frank Act 1032(a).

37(m)(7) Liability After Foreclosure

Section 1414(c) of the Dodd-Frank Act created new TILA section 129C(g), which establishes certain requirements for residential mortgage loans subject to protection under a State anti-deficiency law. 15 U.S.C. 1639c(g). TILA section 129C(g)(2) requires that, prior to consummation, the creditor or mortgage originator provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance to the consumer of the loss of such protection. TILA section 129C(g)(3) requires that any creditor or mortgage originator that provides an application to a consumer or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of an anti-deficiency law, shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for refinancing is consummated. TILA section 129C(g)(1) defines anti-deficiency law to mean the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained from a foreclosure sale and the outstanding balance of the mortgage.

Proposed § 1026.37(m)(7) would have implemented TILA section 129C(g)(3), which applies to refinance transactions and proposed comment 37(m)(7)-1 would have provided guidance on when such a disclosure is permitted. Specifically, proposed § 1026.37(m)(7) would have provided that, if the credit is to refinance an extension of credit as described in § 1026.37(a)(9)(ii) or (iii), the creditor must disclose a brief statement that certain State law protections against liability for any deficiency after foreclosure may be lost upon refinancing, the potential consequences of the loss of such protections, and a statement that the consumer should consult an attorney for additional information, labeled "Liability after Foreclosure."

The Bureau proposed this requirement pursuant to its implementation authority under TILA section 105(a). TILA section 129C(g)(3) requires creditors to provide the anti-deficiency disclosure prior to consummation. The Bureau stated in the proposal that it believed that consumers in refinance transactions would benefit from receiving the disclosure in the Loan Estimate provided three days after application since the disclosure informs consumers of the potentially significant consequences of refinancing and is therefore an important consideration for a consumer evaluating whether to proceed with the loan. Further, the Bureau stated it believed that the anti-deficiency disclosure is appropriately tied to the submission of the consumer's application since TILA section 129C(g)(3) requires creditors to provide the disclosure to all consumers to whom it provides an application or from whom it receives an application. The Bureau stated its belief that it would not be feasible to require the disclosure to be provided to any consumer to whom the creditor "provides" a loan application because, as discussed above in the section-by-section analysis of § 1026.2(a)(3), "application" is defined by § 1026.2(a)(3) as the consumer's submission of certain specific information to a creditor. The requirements of TILA section 129C(g)(2) were proposed to be implemented in § 1026.38(p)(3).

The Bureau did not receive any comments specifically on proposed § 1026.37(m)(7). Accordingly, the Bureau is adopting § 1026.37(m)(7) as proposed, based on the authority stated in the proposal. The Bureau is adopting comment 37(m)(7)-1 substantially as proposed but with minor modifications for clarity. See the section-by-section analysis of § 1026.38(p)(3) for a discussion of the proposed provisions implementing TILA section 129C(g)(2).

37(n) Signature Statement

TILA section 128(b)(2)(B)(i) requires the following statement in transactions that are also subject to RESPA and where the extension of credit is secured by the consumer's dwelling, other than timeshares: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application." 15 U.S.C. 1638(b)(2)(B)(i). Current § 1026.19(a)(4) implements this provision by requiring, for transactions subject to RESPA that are secured by the consumer's dwelling (other than home equity lines of credit subject to § 1026.5(b) and timeshares), the statement required by TILA section 128(b)(2)(B)(i) in the good faith estimates and corrected disclosures provided pursuant to § 1026.19(a)(1) and (2).

During the Know Before You Owe initiative, the Bureau received public feedback on the prototype disclosure forms stating that a signature line on the integrated disclosures would facilitate compliance for industry. In addition, during the Bureau's consumer testing, industry participants also stated that a signature line would facilitate compliance. Based on that feedback, the Bureau designed prototype disclosure forms that included signature lines for consumers to confirm receipt of the disclosures and included a signature statement based on the statement required by TILA section 128(b)(2)(B)(i). At the Bureau's consumer testing, participants understood from the prototype signature statement that signing the disclosure did not obligate them to the transaction. *See* Kleimann Testing Report at 153.

Accordingly, the Bureau proposed to implement the signature requirement of TILA section 128(b)(2)(B)(i) in proposed § 1026.37(n), for all transactions subject to § 1026.19(e), which would have provided creditors with the option to add a line for the signatures of the consumers in the transaction, but required the signature statement. The Bureau proposed to modify the signature language required by TILA section 128(b)(2)(B)(i) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). While the substance of the disclosure required by proposed § 1026.37(n) is the same as the statutory language, as discussed in the Kleimann Testing Report, the Bureau stated in the proposal that its consumer testing indicated that consumers easily understand from the proposed language that a signature does not bind them to accept the loan. *See* Kleimann Testing Report at 131, 148, 153, 220

Accordingly, the Bureau believed that the proposed modification would have promoted the informed use of credit, consistent with the purposes of TILA. For this same reason, the Bureau stated its belief that the proposed modification would ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

The Bureau also proposed to use its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to expand the scope of TILA section 128(b)(2)(B)(i) to apply to all transactions subject to proposed § 1026.19(e). As discussed above, TILA section 128(b)(2)(B)(i) applies only to transactions subject to both TILA and RESPA that are secured by the consumer's dwelling, and excludes transactions secured by the consumer's interest in a timeshare. However, the Bureau stated its belief in the proposal that consumers in all transactions subject to proposed § 1026.19(e) would benefit from the disclosure because it ensures that consumers understand they are not obligated to complete the loan transaction just because they signed or received the Loan Estimate. Accordingly, the Bureau stated its belief that the proposed disclosure would promote the informed use of credit, consistent with the purposes of TILA. For these same reasons, the Bureau stated its belief in the proposal that the proposed disclosure would ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and would improve consumer awareness and understanding of residential mortgage loans and would be in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

Proposed § 1026.37(n)(1) would have stated that, at the creditor's option, lines for the signatures of the consumers in the transaction may be provided. The optional signatures lines would be located under the master heading "Additional Information About This Loan" required by proposed § 1026.37(k) and under the heading "Confirm Receipt." Proposed § 1026.37(n)(1) also would have stated that if the creditor includes a line for the consumer's signature, the creditor is required to disclose that, by signing the Loan Estimate, the consumer is only confirming receipt of the form and is not required to accept the loan. For transactions where the creditor does not include a line for the consumer's signature, proposed § 1026.37(n)(2) would have required disclosure of the statement that the consumer does not have to accept the loan because the consumer received or signed the Loan Estimate. The statement that would have been required by proposed § 1026.37(n)(2) would have been located under the heading "Other Considerations" that would have been required by proposed § 1026.37(m), labeled "Loan Acceptance." Proposed comment 37(n)-1 would have clarified that it is at the creditor's discretion whether to provide a signature line for the consumer's signature, but if a signature line is provided, the statement in proposed § 1026.37(n)(1) must be provided. Proposed comment 37(n)-2 would have clarified that, if there is more than one consumer in the transaction, the first consumer signs as the applicant and each additional consumer signs as a "co-applicant." Proposed comment 37(n)-2 also would have clarified that the creditor may add an additional signature page to the back of the form if additional signature lines are necessary to accommodate the number of consumers in the transaction.

A community bank commenter praised the proposed signature line, noting that consumers feel more at ease if they can sign a document to show that they have received it. A non-depository lender further praised the fact that the signature statement was optional. In contrast, a national trade association representing developers of timeshares criticized the inclusion of a signature line as confusing and unnecessary for consumers purchasing timeshare products. Several mortgage creditor trade association commenters stated that the regulation would be clearer if the "Loan Acceptance" requirement were also listed in § 1026.37(m). A document preparation company commenter requested guidance on whether the designation "Applicant" must appear below the consumer's name as shown on form H-24 or if the designation can be changed to reflect the name of the consumer signing the Loan Estimate.

With respect to the commenters' criticism of the signature line as permitted by § 1026.37(n)(1) as confusing, as expressly stated by that provision, a signature line is not required and thus, could be omitted for such transactions. In response to the commenters' request that the Loan Acceptance requirement be listed in § 1026.37(m), the Bureau believes that listing the Loan Acceptance disclosure under both § 1026.37(n) and (m) would be duplicative and declines to add it to § 1026.37(m). The Bureau believes that, because the Loan Acceptance disclosure is required only if the creditor does not use the optional signature line, its placement under § 1026.37(n) is clear and thus, facilitates compliance. In response to the commenter's request to permit disclosure of the applicant's name, rather than the designation "Applicant" under the signature line, the Bureau is adding comment 37(n)(1)-3 to clarify that a creditor may insert the consumer's name under the signature line, rather than using the designation "Applicant" in form H-24, but is not required to do so.

For the reasons discussed and based on the legal authority cited above and in the proposal, the Bureau is adopting § 1026.37(n) and comments 37(n)-1 and -2 as proposed, with minor modifications to § 1026.37(n)(1) to conform to form H-24 and to comment 37(n)-2 for clarity. The Bureau is also adding comment 37(n)-3 for the reasons discussed above.

37(o) Form of Disclosures

TILA section 122(a) provides that the information required to be disclosed under TILA shall be disclosed clearly and conspicuously, in accordance with regulations of the Bureau. 15 U.S.C. 1632(a). TILA section 128(b)(1) provides that the disclosures required by sections 128(a) and 106(b) through (d) generally shall be conspicuously segregated from all other terms, data, or information provided in connection with a transaction, including any computations or itemization. 15 U.S.C. 1638(b)(1). Regulation Z currently implements these requirements for closed-end transactions in § 1026.17(a)(1), which provides that the disclosures shall be made clearly and conspicuously in writing, in a form that the consumer may keep. Section 1026.17(a)(1) further provides that the disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures under § 1026.18 (and § 1026.47 for private education loans).

As discussed above, the Bureau proposed to exclude transactions subject to § 1026.19(e) and (f) from the coverage of § 1026.17(a) and (b). Consequently, the requirements of TILA sections 122(a) and 128(b)(1) must be implemented elsewhere. The Bureau, pursuant to its implementation authority under TILA section 105(a), therefore proposed to implement the statutory segregation and clear and conspicuous requirements of TILA sections 122(a) and 128(b)(1) for those disclosures in new §§ 1026.37(o) and 1026.38(t). The Bureau stated its belief in the proposal that these requirements will effectuate the purposes of TILA by assuring a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him or her and avoid the uninformed use of credit. In addition, § 1026.37(o) establishes a standard form requirement for transactions subject to RESPA and provides flexibility for certain aspects of the integrated disclosures.

37(o)(1) General Requirements

Proposed § 1026.37(o)(1)(i) would have established the requirements that the disclosures required by § 1026.37 be clear and conspicuous, in writing, and grouped together, segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws. Proposed comment 37(o)-1 would have clarified that the clear and conspicuous standard requires that the disclosures be legible and in a readily understandable form. This guidance would have been adopted from existing comment 17(a)(1)-1. The comment also would have clarified that proposed § 1026.37(o)(1)(i) would have required that the disclosures required by § 1026.37 be provided in a form that is physically separate from any other documents or disclosures, including any other disclosures required by State or other laws. This requirement is stricter than the guidance found in existing comment 17(a)(1)-2, which provides that the disclosures may be grouped together and segregated from other information in a variety of ways other than a separate piece of paper. Proposed § 1026.37(o)(1)(ii) also would have provided that, except as provided in § 1026.37(o)(5), the disclosures shall contain only the information required by § 1026.37(a) through (n) and that they generally shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-24. Proposed comment 37(o)(1)-2 would have clarified that, even if a creditor elects not to use the form as a model (when so permitted because the transaction is not a federally related mortgage loan, as discussed above), failure to comply with these requirements, to designate as "estimated" all disclosures designated as such in the form, or to use letter size paper as shown in form H-24 constitutes noncompliance with the requirement of § 1026.37(o)(3)(ii) that the disclosures be made with headings, content, and format substantially similar to the model form.

The Bureau stated in the proposal that it recognized that, in certain credit sale and other non-mortgage, closed-end credit transactions, creditors include the disclosures required by § 1026.18 in the loan contract or some other document and ensure that they are grouped together and segregated by outlining them in a box or other means authorized by comment 17(a)(1)-2. The Bureau further stated in the proposal that it understood, however, that this approach is virtually never employed for mortgage credit, for which the new disclosures under proposed §§ 1026.19(e) and 1026.37, rather than § 1026.18 disclosures, are required. The Bureau stated in the proposal that it understood that mortgage lenders generally use a standardized note that cannot accommodate dynamically generated, transaction-specific disclosures, and they almost universally employ the model disclosure forms provided in appendix H to Regulation Z as stand-alone, separate documents for providing required TILA disclosures. The RESPA GFE and RESPA settlement statement forms required by RESPA for federally related mortgage loans currently are delivered as separate documents, in accordance with the standard form requirements of Regulation X. Moreover, the Bureau stated in the proposal that the proposed forms were developed as stand-alone documents through an extensive outreach and consumer testing process, as discussed above, and the Bureau was concerned that much of the informative benefit of the forms could be lost or compromised if they were permitted to be included within other documents. For these reasons, the Bureau stated its belief in the proposal that requiring the § 1026.37 disclosures to be delivered as a separate document maximizes the benefits of the forms and does not present any significant new obligation that mortgage lenders do not already effectively observe. The Bureau sought comment in the proposal, however, on whether there currently are transactions subject to proposed § 1026.19(e) that may be burdened by the adoption of this requirement. Comments received in relation to this issue are discussed in the section-by-section analysis of § 1026.19(e).

A large bank requested guidance on whether it could provide a cover letter along with the Loan Estimate that outlines the next steps in the loan process. Provided the disclosures required by § 1026.37 were made on pages separate from any cover letter, the Bureau believes that § 1026.37(o)(1) as finalized permits providing a cover letter to a consumer along with the Loan Estimate. Because the Bureau continues to believe that it will effectuate the purposes of both TILA and RESPA, the Bureau is adopting § 1026.3(o)(1) as revised to delete the requirement that the disclosures be on separate pages that are not commingled with any other documents or disclosures because the Bureau believes that requirement is redundant to the requirement that the disclosures be grouped together and segregated from everything else. The Bureau is adopting comment 37(o)(1)-1 substantially as proposed with minor modifications to clarify the requirement that the pages of the Loan Estimate be segregated from everything else and to explain that creditors may disclose only the information required by § 1026.37(a) through (n), based on the legal authority described in the proposal and above. The Bureau is adopting comment 37(o)(1)-2 as proposed.

37(o)(2) Headings and Labels

Proposed § 1026.37(o)(2) would have provided that, wherever form H-24 discloses the required master heading, heading, subheading, label, or similar designation for a disclosure as "estimated," that corresponding master heading, heading, subheading, label, or similar designation required by § 1026.37 must contain the word "estimated," even if the provision requiring such headings, label, or similar designation does not. As noted below in the section-by-section analysis of § 1026.38, many of the disclosure items required by that section cross-reference their estimated counterparts in § 1026.37, although the same items may not be estimates as required by § 1026.19(f). To avoid confusion over which items are estimates and which are not, the content provisions of § 1026.37 do not qualify any of the master headings, headings, subheadings, labels, and similar designations of the items disclosed as "estimated." Instead, proposed § 1026.37(o)(2) incorporates by reference the "estimated" designations reflected on form H-24, and as discussed below, proposed § 1026.38(t)(2) incorporates by reference the "estimated" designations reflected on form H-25. Proposed comment 37(o)(2)-1 would have provided guidance regarding the use of the "estimated" designations.

The Bureau did not receive any comments regarding proposed § 1026.37(o)(2) or its accompanying commentary. The Bureau is adopting § 1026.37(o)(2) substantially as proposed but is expanding it to require the capital letter designations in the headings and labels on form H-24 to be disclosed, as applicable. The Bureau makes this revision to clarify that the capital letter designations shown before or after certain of the headings and labels on form H-24 are required, even if the specific provisions of the corresponding disclosures in § 1026.37 do not contain the initial capital letter. The Bureau is also revising the description of § 1026.37(o)(2) from "Estimated disclosures" to "Headings and labels." The Bureau is adopting § 1026.37(o)(2) as revised and is adopting comment 37(o)(2)-1 with modifications to conform to § 1026.37(o)(2) as revised, and to clarify that the abbreviation "est." for estimated as illustrated on form H-24 of appendix H is also incorporated into the disclosure requirements of § 1026.37 and must be disclosed.

37(o)(3) Form

Proposed § 1026.37(o)(3)(i) also would have provided that, for a transaction that is a federally related mortgage loan, as defined in Regulation X, the disclosures must be made using form H-24, set forth in appendix H to Regulation Z. The Bureau proposed to require that creditors use a standard form (form H-24 of appendix H) for federally related mortgage loans pursuant to RESPA section 4, as amended by the Dodd-Frank Act. 12 U.S.C. 2603(a). Section 4 has long authorized the use of standard forms. As discussed above, the Dodd-Frank Act amended section RESPA section 4(a) to require the integrated disclosures that are the subject of this proposal, which specifically include both the settlement statement under section 4 and the RESPA GFE under section 5(c). Although the Dodd-Frank Act eliminated one reference in section 4(a) to a "standard" form, it left another reference in place, as well as another reference to a "standard" form in section 4(c). And by including the cross-reference to section 5(c) in section 4 in relation to the integrated disclosure mandate, Congress effectively extended RESPA's existing standard-form authority to the RESPA GFE as well as the RESPA settlement statement requirement. More notably, in amending section 4(a), Congress did not include an explicit prohibition of a mandatory-use form as is found in TILA section 105(b).[294] For this reason, the Bureau stated in the proposal that it does not believe that Congress intended to eliminate standard-form authority from RESPA section 4.

The Bureau also proposed a mandatory form pursuant to its authority under RESPA section 19(a) to prescribe such rules and regulations as may be necessary to achieve RESPA's purposes. 12 U.S.C. 2617(a). RESPA's purposes include the establishment of more effective advance disclosure to home buyers and sellers of settlement costs. 12 U.S.C. 2601(b)(1). The Bureau stated its belief in the proposal, based on consumer testing results, that the purpose of more effective advance disclosure of settlement costs is better achieved if all lenders provide those disclosures in a standardized format that consumers can recognize and understand. Moreover, the Bureau stated in the proposal that credit terms included in the Loan Estimate facilitate and enhance the consumer's ability to shop for the best-priced loan, including settlement charges, which have a direct relationship to, and can overlap with, credit terms. The Bureau stated its belief in the proposal that disclosure of the settlement costs alone, without the context provided by the credit terms, is therefore far less effective. This is consistent with HUD's rationale in HUD's 2008 RESPA Final Rule for including credit terms in its good faith estimate form. *See* 73 FR 68204, 68214-15 (Nov. 17, 2008). Accordingly, the Bureau stated its belief in the proposal that it is authorized under section 19(a) to require the standard form for the disclosure of all of the information it contains, both settlement costs and credit terms alike.

As noted in the proposal, certain closed-end consumer credit transactions are subject to the requirements of proposed § 1026.19(e) but do not fall within the Regulation X definition of

[294] TILA section 105(b) states that "nothing in this title may be construed to require a creditor or lessor to use any such model form or clause prescribed by the Bureau under this section." 15 U.S.C. 1604(b).

"federally related mortgage loan." These include construction-only loans with terms of less than two years that do not finance the transfer of title to the borrower and loans secured by vacant land on which a home will not be constructed or placed using the loan proceeds within two years after settlement of the loan. *See* § 1024.5(b)(3) and (4). In addition, transactions subject to proposed § 1026.19(e) but not subject to RESPA would include loans secured by non-residential real property, provided they have a consumer purpose as required by § 1026.1(c)(1)(iv). *See* § 1024.2, definition of "federally related mortgage loan," paragraph (1)(i) (requiring that the securing property be "residential real property").

For such transactions that are subject to proposed § 1026.19(e) because they are subject to TILA and are secured by real property, but that are not subject to RESPA, the Bureau did not propose to mandate the use of form H-24 as a standard form. As noted above, TILA section 105(b) explicitly provides that nothing in TILA may be construed to require a creditor to use any model form or clause prescribed by the Bureau under that section. Accordingly, proposed § 1026.37(o)(3)(ii) would have provided that, for transactions subject to § 1026.37 that are not federally related mortgage loans, the disclosures must be made with headings, content, and format substantially similar to form H-24 but use of that form is not required. Consistent with TILA section 105(b), proposed comment 37(o)(3)-1 would have explained that, although use of the form as a standard form is not mandatory for such transactions, its use as a model form, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.37(o). In consideration of the recommendation of the Small Business Review Panel, the Bureau sought comment in the proposal on the advantages, such as cost-saving benefits, and disadvantages of requiring a standard form for the Loan Estimate for federally related mortgage loans and model forms for other credit transactions subject to proposed § 1026.19(e). *See* Small Business Review Panel Report at 28. Proposed § 1026.37(o)(3)(iii) would have provided that the disclosures may be provided in electronic form, subject to compliance with the E-Sign Act. This provision parallels existing § 1026.17(a)(1).

A national title company and a consumer advocacy group stated their support of the Bureau's requiring standard forms for federally related mortgage loans because doing so is more cost-effective for industry and benefits consumers in that they are able to learn the forms over the course of different transactions. Those commenters also apparently believed that the Bureau should require a standard form for all transactions subject to §§ 1026.37 and 1026.38 but, as noted, TILA section 105(b) specifically prohibits requiring a creditor to use any model form or clause. A consumer advocacy group supported the Bureau's requirement that disclosures for non-federally related mortgage loans be made in a format substantially similar to the standard form because it believes uniformity is beneficial for consumers.

Many varied types of industry commenters requested guidance on whether specific design elements of form H-24 were required, such as differing font sizes, bolding, shading, and underscoring. A national trade association representing banks requested permission for creditors to deviate from form H-24 generally with regard to graphics and shading because many of the required elements are expensive to implement. With respect to the differing font sizes, bolding, shading, and underscoring, several industry commenters objected to these formatting requirements because programming software to produce a single form with these various elements is expensive. With regard to shading specifically, industry commenters argued that documents with shading can be difficult to print or fax without obscuring text and are expensive to print because they require more ink than documents without shading. Industry commenters argued that these implementation costs would be transferred to the consumer and thus negate the potential benefit of the design of the integrated disclosures for consumers. Lastly, a document preparation company requested guidance on whether a creditor could produce a form optimized for screen presentation so that such disclosures were more easily viewed on a computer screen or a tablet. For example, the commenter suggested being able to present the Loan Estimate to a consumer in sections, rather than in pages and allowing the consumer to electronically acknowledge receipt of each section.

For federally related mortgage loans, § 1026.37(o)(3) requires the use of form H-24, including all of its elements, meaning that various font sizes, bolding, shading, and underscoring are required by § 1026.37(o)(3). For mortgage loans to which § 1026.19(e) applies but that are not federally related mortgage loans, form H-24 is only a model form. For federally related mortgage loans, the Bureau recognizes that the design of form H-24 is different from the RESPA GFE, RESPA settlement statement, and the TILA disclosures. As discussed elsewhere, the Bureau designed the integrated disclosures to more easily and clearly provide the information that is currently provided in two separate disclosures to consumers on one disclosure in as few pages as possible. As noted in part III above, at the Bureau's Quantitative Study, consumers who used the new Loan Estimate and Closing Disclosure performed statistically significantly better than those who used the existing disclosures. *See* Kleimann Quantitative Study Report at 68. Moreover, the Bureau believes that the design elements of the integrated disclosures contribute significantly to their better performance with consumers. The Bureau believes that this benefit to consumers outweighs the one-time cost of programming software to implement these design elements or any increased costs of copying and printing forms with these elements. With respect to the request for guidance on whether a creditor could produce a version of the disclosures optimized for a screen or a tablet, neither § 1026.37(o)(3)(iii) nor other provisions of § 1026.37 permits any deviations from form H-24 for forms optimized to be shown on a screen or tablet. The Bureau believes that current technology provides for the viewing of the integrated disclosures as designed on computer screens and other devices. The Bureau's Know Before You Owe initiative was conducted on its website, on which the prototype disclosures were displayed for viewing and the submission of feedback by the public. With respect to whether such changes are permitted for non-federally related mortgage loans for which the integrated disclosures may be used as model forms, TILA section 105(b) permits creditors to delete non-required information or rearrange the format of the model forms, if in making such deletion or rearranging the format, the creditor does not affect the substance, clarity, or meaningful sequence of the disclosure. For the aforementioned reasons, the Bureau is adopting § 1026.37(o)(3)(i) substantially as proposed but with a technical revision to change the reference from § 1026.37 to § 1026.19(e), based on the legal authority described above and in the proposal. Based on that same authority, the Bureau is adopting § 1026.37(o)(3)(ii) and comment 37(o)(3)-1 as proposed and § 1026.37(o)(3)(iii) substantially as proposed but with minor modifications for clarity.

37(o)(4) Rounding

As described in the proposal, the prototype disclosure forms used in the Bureau's pre-proposal consumer testing displayed rounded numbers for certain information required to be disclosed by § 1026.37. For example, rounded numbers were disclosed for the information required by § 1026.37(b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l). In addition, the total monthly payment required by proposed § 1026.37(c)(2)(iv) was rounded if any of its component amounts were required to be rounded. The loan amount required to be disclosed by proposed § 1026.37(b)(1) and percentage amounts required to be disclosed by proposed § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(2) and (3) that did not contain cents or fractional amounts were required to be disclosed without decimal places.

The Bureau stated in the proposal that in its consumer testing, using rounded numbers in this manner, consumers were able to see and evaluate the information required by the above-mentioned paragraphs of § 1026.37 quickly. The Bureau was concerned, as stated in the proposal, that a large number of exact dollar amounts and percentages had the potential to cause information overload and reduce the overall effectiveness of the disclosure. In the proposal, the Bureau stated its belief that rounding certain amounts on the Loan Estimate reduces the quantity of numbers on the form and the complexity of information about potential risks. For example, the Bureau stated that participants at its testing were able to evaluate the risks of maximum payments and interest rates in the Loan Terms table using rounded numbers, as well as evaluate the rounded closing cost estimates, enhancing the utility of the disclosure for consumers. The Bureau believed, as described in the proposal, that the exact number of cents or decimal places for information required to be disclosed by the above-mentioned paragraphs of § 1026.37 at the time the Loan Estimate is provided would not provide a benefit to consumers that would outweigh the risk of information overload.

Accordingly, the Bureau proposed to use its implementation authority under TILA section 105(a), its authority under section 1032(a) of the Dodd-Frank Act, and its authority under section 1405(b) of the Dodd-Frank Act with respect to residential mortgage loans, to require only rounded numbers and percentages without fractional amounts to be disclosed without decimal places for certain information on the Loan Estimate. The Bureau stated its belief in the proposal that whole dollar and certain whole percentage amounts appear to be sufficient to inform consumers of the estimated periodic payment amounts, estimated closing costs, financial risks posed by maximum amounts, and ensure a meaningful disclosure of credit terms. In addition, the disclosure of exact amounts could suggest to consumers a degree of accuracy that may not be warranted for some of the estimated figures.

In the proposal, the Bureau stated its belief that this requirement ensures the meaningful disclosure of credit terms to consumers and promotes the informed use of credit. In addition, the Bureau believed that this requirement may 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. Further, the Bureau stated that this requirement may improve consumer awareness and understanding of transactions involving residential mortgage loans and is in the interest of consumers and in the public interest.

Specifically, proposed § 1026.37(o)(4)(i)(A) would have required only rounded numbers for the information disclosed pursuant to proposed § 1026.37(b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l). Proposed § 1026.37(o)(4)(i)(B) would have required the loan amount disclosed pursuant to proposed § 1026.37(b)(1) to be disclosed without decimal places denoting cents if the cent amount is zero. Proposed § 1026.37(o)(4)(i)(C) would have required the total monthly payment disclosed pursuant to § 1026.37(c)(2)(iv) to be disclosed as a rounded number if any of its component amounts are required to be rounded. The Bureau did not receive any comments on proposed § 1026.37(o)(4)(i)(A) or (B) and is adopting them as proposed. Proposed § 1026.37(o)(4)(ii) would have required percentages that are disclosed pursuant to § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(3) to be disclosed as an exact number up to two or three decimal places and percentages that are disclosed pursuant to

§ 1026.37(l)(2) to be disclosed as an exact number up to three decimal places. Proposed comment 37(o)(4)-1 would have clarified that, consistent with § 1026.2(b)(4), all numbers are to be disclosed as exact numbers, unless required to be rounded by proposed § 1026.37(o)(4). Proposed comments 37(o)(4)-2, 37(o)(4)(i)(A)-1, 37(o)(4)(i)(B)-1, and 37(o)(4)(ii)-1 would have provided guidance regarding rounding amounts on the Loan Estimate.

Many industry commenters criticized the proposal's requirement for rounded disclosures. Commenters argued that it would be difficult for consumers to compare and reconcile truncated values, especially when some numbers were rounded and others were not. The industry commenters also noted that programming software to create forms with rounded numbers is difficult and expensive and that, in their opinion, the benefit to the consumers of doing so does not outweigh the implementation cost. A document preparation company requested guidance on whether percentages which contain more than three decimal places must to be rounded to three decimal places pursuant to § 1026.37(o)(4)(ii). A document preparation company requested guidance on how numbers required to be rounded on the Loan Estimate would be compared to the Closing Disclosure for the purposes of the tolerances provided in § 1026.19(f)(1). That issue is addressed above in the section-by-section analysis of § 1026.19(e)(3)(i).

The Bureau does not believe that rounded numbers would be difficult for consumers to use in comparing the Loan Estimate and the Closing Disclosure. As stated in the proposal, the Bureau believes, based on its extensive consumer testing, that rounded disclosures allow consumers to digest the information on the Loan Estimate faster and more easily than disclosure of non-rounded numbers. Moreover, given that many of the numbers on the Loan Estimate are simply estimates and will likely change on the Closing Disclosure, disclosing exact values is unnecessary and may contribute to information overload without any real benefit to consumers.

Though the Bureau understands that programming forms to round numbers may be more expensive to implement, the Bureau does not believe that that one-time cost outweighs the benefit to consumers of disclosing rounded numbers. Indeed, the integrated disclosures performed significantly better in consumer testing than the existing RESPA GFE, RESPA settlement statement, and TILA disclosures. *See* Kleimann Quantitative Study Report at 68. With respect to the request for guidance on how to disclose percentages required to be disclosed by § 1026.37(o)(4)(ii) that contain more than three decimal places, the Bureau notes that the provision provides only three decimal places, and thus, percentages of more than three decimal places would need to be rounded to three decimal places to comply with § 1026.37(o)(4)(ii). The Bureau is revising comment 37(o)(4)(ii)-1 to this effect.

The Bureau continues to believe that the rounding of certain numbers disclosed on the Loan Estimate as required by proposed § 1026.37(o)(4) will effectuate the purposes of both TILA and RESPA and is, therefore, adopting it substantially as proposed. The Bureau is revising § 1026.37(o)(4)(i)(A) to except from the rounding requirements the per diem amount required to be disclosed by § 1026.37(g)(2)(iii) and the monthly amounts required to be disclosed by § 1026.37(g)(3)(i) through (iv) because the Bureau believes that it is important for consumers to know the precise figures for these amounts given that they represent the exact interest paid and exact monthly costs for other items that would be paid in advance at consummation. However, the totals required to be disclosed by § 1026.37(g)(2)(iii) and (g)(3)(i) through (iv) must still be rounded so that they can be understood easily by consumers and totaled under § 1026.37(g)(5). The Bureau did not receive any comments on the proposed commentary to § 1026.37(o)(4) and is adopting § 1026.37(o)(4)(i)(B) and (o)(4)(ii) and comments 37(o)(4)-1, -2, 37(o)(4)(i)(A)-1, 37(o)(4)(i)(B)-1 substantially as proposed, with modifications for clarity. For the reasons discussed, the Bureau is revising comment 37(o)(4)(ii)-1. The Bureau is adopting § 1026.37(o)(4)(i)(C) as proposed.

37(o)(5) Exceptions

As described in the proposal, the Bureau's consumer testing indicated that the format of information on the disclosures required by proposed § 1026.37 substantially affects the way in which a consumer interacts with and understands the information disclosed. In addition, the Bureau stated in the proposal that it understood that credit and real estate transactions involve significant variability and believes that it is important to provide industry with clear guidance regarding permissible changes to the format requirements to accommodate this variability. Accordingly, the Bureau stated its belief in the proposal that it must specify the changes to the format that are required and permissible, to ensure the disclosures provided to consumers convey the information required by proposed § 1026.37 in a clear, understandable, and effective manner for consumers.

As described above, pursuant to RESPA section 19(a), 12 U.S.C. 2617(a), § 1024.7 of Regulation X currently requires the use of a standard form to provide the disclosures required by section 5 of RESPA, 12 U.S.C. 2604. In contrast, TILA section 105(b), 15 U.S.C. 1604(b), provides for model disclosures instead of a standard form. However, TILA permits creditors to delete information not required under the statute, other than numerical disclosures, and rearrange the format, only if doing so does not affect the substance, clarity, or meaningful sequence of the disclosure. Pursuant to its authority under RESPA section 19(a), its implementation authority under TILA section 105(a), and its authority under section 1032(a) of the Dodd-Frank Act, the Bureau proposed § 1026.37(o)(5), which sets forth the required changes to the format required to be used by proposed § 1026.37(o)(3), illustrated by form H-24 of appendix H to Regulation Z, and the permissible changes that do not affect the substance, clarity, or meaningful sequence of the disclosure. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau stated in the proposal that it believed specifying the required and permissible changes to the form would ensure that the features of consumer credit transactions secured by real property 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. The Bureau stated its belief in the proposal that specifying the required and permissible changes to the form effectuates the purposes of TILA set forth in TILA section 102(a) and the purpose of the integrated disclosure set forth in TILA section 105(b), because it would ensure meaningful disclosure of credit terms to consumers, promote the informed use of credit, and facilitate compliance by providing flexibility where warranted. In addition, the Bureau stated its belief that this requirement would effectuate the purposes of RESPA by promoting more effective advance disclosure of settlement costs.

Accordingly, proposed § 1026.37(o)(5) would have specified certain changes to form H-24 that are required or that do not affect the substance, clarity, or meaningful sequence of the disclosure and therefore are permissible. Proposed § 1026.37(o)(5)(i) would have required the substitution of the words “month” or “monthly” on the form H-24, where used to designate the frequency of payments or the applicable unit-period of the transaction, with a different word representing the frequency of payments or unit-period under the transaction’s actual terms, if different from monthly. Proposed § 1026.37(o)(5)(ii) would have permitted the deletion of lender credits from the Cash to Close table, required by proposed § 1026.37(d)(4), if the amount is zero. Proposed § 1026.37(o)(5)(iii) would have permitted the use of a logo for, or addition of a slogan with, the information required by § 1026.37(a)(3), and would have required the information disclosed pursuant to § 1026.37(a)(3), if no logo is used, to be disclosed in a similar format as form H-24 of appendix H to Regulation Z. Proposed § 1026.37(o)(5)(iv) would have permitted the attachment of a business card over the information required by proposed § 1026.37(a)(3). The Bureau did not receive any comments on proposed § 1026.37(o)(5)(i) through (iv).

Proposed § 1026.37(o)(5)(v) would have permitted the insertion of administrative information above the information required to be disclosed by proposed § 1026.37(a)(2) and adjacent to the information required to be disclosed by proposed § 1026.37(a)(3) to assist in the identification of the form or the information contained on the form. Proposed § 1026.37(o)(5)(vi) would have permitted the form to be translated into languages other than English. The Bureau stated in the proposal that it understood that some State laws require versions of the disclosures required under TILA and RESPA to be provided to consumers in a language other than English when the negotiation of the transaction is conducted in that language.[295] In addition, the Bureau noted that some of the regulatory authorities in these States publish their own translations of these disclosures for use by the public.[296] As described in the proposal, the Bureau's consumer testing prior to the proposal included two rounds of testing with Spanish-speaking consumers of Spanish-language prototype disclosure forms to determine whether co-development of a non-English version of the disclosure would be beneficial to consumers.[297] At the proposal stage, the Bureau determined that co-development of a separate

[295] *See* Cal. Civ. Code §§ 1632, 1632.5; Or. Rev. Stat. § 86A.198.
[296] The California Department of Corporations has translated the RESPA GFE into Chinese, Korean, Tagalog, and Vietnamese, available at http://www.corp.ca.gov/Forms/Default.asp. The Oregon Division of Finance and Corporate Securities provides version of the RESPA GFE and early TILA disclosure in Russian, Spanish, and Vietnamese, available at http://www.cbs.state.or.us/dfcs/ml/mortgage_disclosures_translations.html.
[297] According to the U.S. Census Bureau, based on data from the 2007 American Community Survey, 55.4 million people spoke a language other than English at home, and of those people, 62 percent spoke Spanish. U.S. Census

Spanish version of the disclosures would likely yield little benefit to consumers, because any differences in performance with the Spanish prototypes during testing were caused more by translation than design and structural issues. The Bureau stated its belief in the proposal that this may be due, in part, to the fact that the Bureau intentionally pursued a more graphic than textual design for the Loan Estimate with as few words as possible. The Bureau stated in the proposal that it believed the proposed design highlights key information and allows consumers to quickly recognize and find the key information about the transaction without large amounts of text. The Bureau further stated in the proposal that it did not believe the differences in language necessitated changes to the design of the disclosure. Accordingly, the proposed rule only included English-language disclosure forms and would have permitted the translation of these forms. The Bureau stated in the proposal that it planned to review issues surrounding translations of the integrated disclosures before issuing the final rule and solicited comment on whether the final rule should include sample Spanish-language or other non-English language forms.

Proposed comment 37(o)(5)-1 would have clarified that creditors making any changes that are not expressly permitted may lose their protection from civil liability under TILA, because such changes may affect the substance, clarity, or meaningful sequence of the disclosure. Proposed comment 37(o)(5)-2 would have clarified that the form may be completed by hand, typewriter, computer, or other word processing device, as long as the method produces clear and legible text and uses the required formatting, including bold font where shown on form H-24. The comment would have clarified that pursuant to § 1026.37(o)(5), such completion by

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Bureau, *Language Use in the United States: 2007*, ACS-12 (Apr. 2010), available at http://www.census.gov/hhes/socdemo/language/data/acs/ACS-12.pdf.

hand or typewriter would not have exempted the creditor from the requirement to keep records in an electronic, machine readable format under proposed § 1026.25. Proposed comment 1026.37(o)(5)-3 would have clarified that if there are multiple creditors or mortgage brokers for a transaction, a creditor may alter the space provided on form H-24 and add labels to disclose additional contact information under proposed § 1026.37(m), or disclose the additional information on a separate page with an appropriate cross-reference, if the space provided does not accommodate the information to be disclosed on the page. Proposed comment 1026.37(o)(5)-4 would have clarified that a creditor may add signature lines to form H-24 under the "Confirm Receipt" heading required by proposed § 1026.37(n), or an additional page with an appropriate cross-reference, if the space provided by form H-24 cannot accommodate the signature lines for multiple applicants.

Several document preparation companies commented that the location permitted for insertion of administrative information by proposed § 1026.37(o)(5)(v) was problematic and that industry practice was to place administrative information on the bottom of forms. The commenters noted that including administrative information at the top and right of the Loan Estimate, as required by proposed § 1026.37(o)(5)(v) risked the administrative information interfering with the substantive disclosures of the Loan Estimate, whereas the bottom of the form was less prominent. Further, the commenters noted that administrative information was typically placed at the bottom of a form to avoid it being covered if the form were stapled or clipped together. Commenters also requested that administrative information be permitted to be included on every page, rather than just on the first page of the Loan Estimate as permitted by proposed § 1026.37(o)(5)(v) because there may be different versions of each page depending on the type of transaction and it is important for there to be a unique identifier on each page. In addition, document company commenters and a large bank also requested that form H-24 be revised to allow at least 1.5 or 1.75 inches of white space at the bottom for bar coding or other administrative information.

The Bureau received comments from both industry and consumer advocacy groups requesting that the Bureau issue sample forms translated into other languages. Consumer advocacy group commenters noted that failure to provide the forms in other languages could have a disparate impact on non-English speaking populations. One consumer advocacy group specifically requested translation of forms into Spanish because 16 percent of the population of the United States is of Hispanic origin. Industry commenters also requested that the Bureau provide foreign translations of the integrated disclosures so that translations were consistent across the industry.

A consumer advocacy group suggested that proposed comment 37(o)(5)-1 which clarified that creditors making any changes that are not expressly permitted may lose their protection from civil liability under TILA, read in conjunction with § 1026.37(o)(5)(i) which requires the creditor to describe the appropriate unit-period whenever the form uses “monthly” or “month” to reflect the correct terms of the transaction, suggests that a creditor would not lose their protection from civil liability under TILA if it disclosed the wrong unit-period. A national title company questioned whether manual completion of the Loan Estimate as permitted by comment 37(o)(5)-2 would permit a creditor to deviate from the shading and formatting shown on form H-24 that is required for federally related mortgage loans by § 1026.37(o)(3). Lastly, the Bureau received comments from two document preparation companies seeking guidance on when additional pages may be added to the Loan Estimate.

In response to the comments regarding the placement of administrative information as permitted by § 1026.37(o)(5)(v), the Bureau is adopting proposed § 1026.37(o)(5)(v) as revised to permit insertion of administrative information at the bottom of each page of the Loan Estimate and not only on the first page. With respect to the commenters' request for additional white space on the bottom of the form, there is limited space on the Loan Estimate and the Bureau could not increase the white space at the bottom of the pages of form H-24 without adding additional pages to the disclosure. Adding additional pages to the disclosure would, in turn, increase the paperwork burden for industry and consumers and potentially risk information overload of consumers or otherwise affect consumers' ability or desire to engage with the form. Accordingly, the Bureau declines to revise the layout of form H-24 to increase the white space at the bottom of the page.

Regarding translation, since the proposal, the Bureau has worked to translate the integrated disclosures into Spanish. Further, in response to the comments described above requesting Spanish translations that have been subject to consumer testing, the Bureau is including Spanish-language models and samples of the Loan Estimate and Closing Disclosure as form H-28 of appendix H to Regulation Z. Consumer group commenters also requested that the Bureau translate the forms into other languages such as Korean, Chinese, Russian, and Vietnamese and into formats specifically designed for visually impaired or elderly consumers. While the Bureau has not developed translations in these languages, or revisions for the visually impaired or elderly, at this time, it will consider doing so after the issuance of this final rule. Because the Bureau continues to believe that translating the forms into languages other than English will effectuate the purposes of both TILA and RESPA, it is adopting § 1026.37(o)(5)(vi) substantially as proposed, but renumbered as § 1026.37(o)(5)(ii) and with modifications to provide additional clarity, as described below. The Bureau is also adding comment 37(o)(5)-6 to provide additional guidance regarding permissible modifications to form H-24 to accommodate the translated language.

With respect to manual completion, comment 37(o)(5)-2 clarifies that a creditor could reproduce blank form H-24 included in appendix H to Regulation Z and then complete the individual disclosures required by § 1026.37 by hand, thereby retaining the headings, formatting, and shading of form H-24. Comment 37(o)(5)-2 does not permit deviation from form H-24 for manual completion. With respect to the suggestion that comment 37(o)(5)-1 would permit a creditor to disclose an incorrect unit-period without losing protection from civil liability under TILA, the Bureau does not believe that result follows from the regulation. Section 1026.37(o)(5)(i) requires the creditor to substitute the “appropriate” unit-period if not month or monthly. Only the substitute of an “appropriate” unit-period is a permissible change pursuant to § 1026.37(o)(5)(i). Accordingly, a creditor who substituted an incorrect unit-period would not be in compliance with § 1026.37(o)(5)(i) and comment 37(o)(5)-1 correctly states that such a creditor may lose its protection from civil liability under TILA.

With respect to the requests for guidance regarding additional pages, the regulation states whether an additional page is permitted to be added to the Loan Estimate for a required disclosure that does not fit in the space allocated for it on form H-24 in the specific sub-section of § 1026.37 or its associated commentary. Otherwise, the use of an additional page is not permitted by § 1026.37(o)(3). To provide additional clarity, the Bureau is revising comment 37(o)(5)-5 to state that additional pages may be required or permitted by specific disclosure requirements in § 1026.37, and not only by § 1026.37(o)(5).

The Bureau received comments that the proposed Loan Estimate would not perform well for transactions without a seller, such as refinancings. For reasons discussed in the section-by-section analysis of § 1026.37(d)(2) and (h)(2), the Bureau is making certain changes to form H-24 for transactions without a seller. Those changes permit disclosure in transactions without sellers of alternative tables described in § 1026.37(d)(2) and (h)(2) which are tailored for transactions without sellers, instead of the information required by § 1026.37(d)(1) and (h)(1), respectively. Such alternative tables would be permitted under § 1026.37(o) because they are permitted under § 1026.37(d) and (h).

For the reasons discussed and pursuant to the legal authority discussed in the proposal and above, the Bureau is adopting § 1026.37(o)(5)(i), (iii), (iv), and (vi) as proposed. The Bureau is not finalizing § 1026.37(o)(5)(ii) because final § 1026.37(g)(6)(ii) requires that the amount of lender credits be left blank if no such amount is disclosed, as discussed in the section-by-section analysis of § 1026.37(g)(6) above. Accordingly, the Bureau is renumbering proposed § 1026.37(o)(5)(vi) as § 1026.37(o)(5)(ii), and modifying the provision to provide additional clarity regarding the modifications permitted to form H-24 to accommodate the translation into a language other than English. Final § 1026.37(o)(5)(ii) permits creditors to modify form H-24 to the extent that translation prevents the headings, labels, designations, and required disclosure items under § 1026.37 from fitting in the space provided on form H-24. The Bureau is also adding comment 37(o)(5)-6 to provide additional guidance regarding the modifications to form H-24 that are permitted to accommodate translation of the Loan Estimate into languages other than English.

The Bureau is adopting § 1026.37(o)(5)(v) as revised to permit disclosure of administrative information at the bottom of form H-24. The Bureau is further adopting, for the reasons discussed, comment 37(o)(5) -3as proposed. The Bureau is not adopting proposed comment 37(o)(5)-4 because it is redundant to the guidance provided in final comment 37(n)-2.

The Bureau is adopting comment 37(o)(5)-1 substantially as proposed, with minor modifications for clarity. The Bureau is revising proposed comment 37(o)(5)-2 to delete the reference to proposed § 1026.25 because the Bureau is not finalizing that provision requiring retention of evidence of compliance in an electronic, machine readable format, as described in the section-by-section analysis of § 1026.25, but is otherwise adopting comment 37(o)(5)-2 as proposed. The Bureau is adopting comment 37(o)(5)-5 as revised to clarify, for the reasons discussed above, how additional pages are permitted to be appended to the Loan Estimate. The Bureau is also adding final comment 37(o)(5)-4 to provide additional guidance regarding the modification of unit-periods disclosed on the Loan Estimate, and to clarify that the term "unit-period" as used in § 1026.37 has the same meaning as in appendix J to Regulation Z.

Section 1026.38 Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

Proposed § 1026.38 would have set forth the required content of the integrated Closing Disclosure, required by proposed § 1026.19(f) to be provided to a consumer no later than three business days prior to consummation.

As discussed above, the Closing Disclosure would have integrated the disclosures currently provided in the RESPA settlement statement and the final TILA disclosure. In addition, the Closing Disclosure would have integrated several disclosures, including new disclosures under the Dodd-Frank Act, that otherwise would likely have been provided separately. The Bureau stated in the proposal that it believed that the five-page Closing Disclosure integrates at least nine pages of disclosures. Specifically, the proposed Closing Disclosure incorporated: (i) three pages of the RESPA settlement statement; (ii) two pages typically used for the final TILA disclosure; (iii) one page for the negative amortization statement under TILA section 129C(f), which was added by section 1414(a) of the Dodd-Frank

Act; (iv) one page for the anti-deficiency protection notice under TILA section 129C(g)(2), which was added by section 1414(c) of the Dodd-Frank Act; (v) one page for the partial payment policy disclosure under TILA section 129C(h), which was added by section 1414(d) of the Dodd-Frank Act; and (vi) one page for the escrow account disclosures under TILA sections 129D(h) and (j)(1)(A), which were added by sections 1461 and 1462 of the Dodd-Frank Act. In addition, the Closing Disclosure would have incorporated the disclosure of: (i) the total interest percentage under TILA section 128(a)(19), which was added by section 1419 of the Dodd-Frank Act; (ii) the approximate amount of the wholesale rate of funds in connection with the loan under TILA section 128(a)(17), which was added by section 1419 of the Dodd-Frank Act; and (iii) the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan under TILA section 128(a)(17), which was added by section 1419 of the Dodd-Frank Act. In absence of the Bureau's integration of the final TILA disclosure and the RESPA settlement statement, these disclosures would have been added to the final TILA disclosure, which potentially could have increased that disclosure's typical two pages to three pages.

The Bureau received numerous comments from industry and consumer groups related generally to the design of the proposed integrated disclosures, which are discussed with respect to the section-by-section analysis of § 1026.37. Specifically with respect to the design of the Closing Disclosure, the Bureau also received comments both criticizing and praising the proposed format. For example, a national title company commented that the proposed Closing Disclosure clearly addresses the most important questions consumers ask at the closing table and gives consumers an informative snapshot of their transaction. An independent title agent commented that the design of the proposed Closing Disclosure was easy to read. In contrast, a title insurance company commented that the Closing Disclosure is too long and overly complicated. Similarly, an individual title attorney commented that she saw no difference in the quality of information provided to consumers in the proposed Closing Disclosure as compared to the RESPA settlement statement and final TILA disclosure.

Proposed § 1026.38 would have provided that the information set forth in § 1026.38(a) through (s) shall be disclosed “as applicable.” The Bureau also proposed comment 38-1 to clarify that a disclosure that is not applicable to a transaction generally may be eliminated entirely or may be included but marked “not applicable” or “N/A.” The Bureau further proposed comment 38-2 to cross-reference § 1026.38(t) for permissible modifications to the format of the disclosures. The Bureau received numerous comments from industry and consumer advocacy groups related to the design of certain required disclosures, which are discussed in their respective section-by-section analyses. As discussed more fully in the section-by-section analysis of § 1026.37, the Bureau received many comments that expressed confusion over whether inapplicable disclosures could be eliminated. In response to those comments, the Bureau is revising § 1026.38 to delete the phrase “as applicable.” The Bureau is further revising comment 38-1 to clarify that disclosures not applicable may be left blank, but that “N/A” or “not applicable” may not be used and form H-25 may not be modified. Accordingly, disclosures may not be deleted from form H-25 unless otherwise provided under § 1026.38. The Bureau is adopting comment 38-2 as proposed. The Bureau is also adding comment 38-3 to clarify that the creditor is required to disclose the actual terms and costs but can disclose estimates under certain circumstances when the actual term or cost is unknown.

38(a) General Information

As with the Loan Estimate in proposed § 1026.37(a), the Bureau proposed to use its authority under TILA section 105(a), and its authority under RESPA section 19(a), Dodd-Frank Act sections 1032(a) and (f), 1098, and 1100A, and for residential mortgage loans, Dodd-Frank Act section 1405(b), to combine and modify disclosures and related requirements currently provided under Regulations X and Z and add additional disclosures in the Closing Disclosure for transactions subject to proposed § 1026.19(f).

The Bureau received a comment from a GSE requesting that the Bureau require additional information to be disclosed under § 1026.38(a). The GSE requested that the Closing Disclosure include a disclosure of the date on which the consumer's interest rate was locked, similar to the disclosure on the Loan Estimate required by § 1026.37(a)(13), which states the date the consumer's locked interest rate will expire. The GSE argued that such a statement on the Closing Disclosure would allow consumers to confirm that the rate they received at closing was locked on the date stated on the Loan Estimate and would provide lenders and investors with important data for compliance purposes. The Bureau does not believe that such a disclosure would benefit consumers given that a consumer could easily review the Loan Estimate to recall the date on which the interest rate was locked. Section 1026.19(e)(3)(iv)(D) of this final rule requires a revised Loan Estimate to be provided to the consumer on the date the interest rate is locked. To prevent potential information overload for the consumer, the Bureau declines to add such a disclosure.

The Bureau did not receive any other comments on proposed § 1026.38(a) and is adopting it as proposed, pursuant to the legal authority discussed above and in the proposal. The specific disclosures required by § 1026.38 are discussed below.

38(a)(1) Form Title

Like the integrated disclosure provided three business days after application, TILA, RESPA, and the Dodd-Frank Act do not expressly prescribe a title for the form that must be provided in connection with a settlement. RESPA refers to the form as the "uniform settlement statement," although § 1024.8 of Regulation X uses the titles HUD-1 and HUD-1A to refer to the forms used to document settlement charges in connection with the purchase of a property or refinancing of an existing mortgage loan, respectively. Regulation Z, however, does not prescribe a title for the disclosures that must be provided to the consumer three business days prior to consummation.

Proposed § 1026.38(a)(1) would have required the creditor to use the term "Closing Disclosure" as the name of the integrated disclosures provided to consumers three business days prior to consummation pursuant to proposed § 1026.19(f). The Bureau stated its belief in the proposal that the adoption of a standardized form name will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). In addition, the Bureau stated in the proposal that it believed the use of standard terminology for the integrated disclosures will facilitate compliance for industry, which is a purpose of this rulemaking under Dodd-Frank Act sections 1098 and 1100A. The Bureau also stated its belief in the proposal that, consistent with section 1405(b) of the Dodd-Frank Act, the requirement of a standard form name may improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

The Bureau did not receive any public comments regarding proposed § 1026.38(a)(1). Because the Bureau continues to believe that a standard form title will serve to effectuate the purposes of TILA and RESPA, it is adopting § 1026.37(a)(1) as proposed.

38(a)(2) Form Purpose

Proposed § 1026.38(a)(2) would have required the creditor to include a statement regarding the purpose of the Closing Disclosure. Specifically, proposed § 1026.38(a)(2) would have required creditors to provide the following statement: “This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.” As noted in the proposal, providing the purpose of the Closing Disclosure is a new requirement, as neither creditors nor settlement agents are currently required to provide this type of information in the disclosures required by TILA, RESPA, and their implementing regulations. Nonetheless, the Bureau stated its belief in the proposal that this disclosure will benefit consumers and promote the informed use of credit by encouraging consumers to use both the Loan Estimate and Closing Disclosure as tools to identify changes in costs and terms that may have occurred after issuance of the Loan Estimate. Accordingly, the Bureau believed, as stated in the proposal, that this disclosure will benefit consumers and effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

A national title insurance company commented that because the closing cost details disclosed on the Closing Disclosure may change between delivery of the Closing Disclosure and consummation of the transaction, the statement should be preceded by the phrase “subject to certain limited exceptions.” Several national trade associations representing mortgage lenders commented that the statement should direct consumers to compare it to their “most recent” Loan Estimate given that a consumer may receive more than one Loan Estimate. A national trade association representing developers of timeshares commented that the statement should not reference comparison to the Loan Estimate since the Loan Estimate should not be provided in timeshare transactions.

With respect to the suggestion to include the phrase “subject to certain limited exceptions,” the Bureau believes adding that phrase would overly complicate the form purpose statement. The statement was designed to use plain language to describe the general difference between the Loan Estimate and Closing Disclosure. With respect to timeshares, final comment 19(e)(1)(iii)-4 permits creditors in timeshare transactions to omit provision of the Loan Estimate and provide only the Closing Disclosure where the transaction is consummated within three business days of receipt of the consumer’s application. The Bureau does not believe that the disclosure required by § 1026.37(a)(2) should be modified because the timeshare creditors can adequately explain to consumers at consummation why they were not required to receive the Loan Estimate in those transactions. The Bureau believes the statement will be just as useful to consumers of transactions secured by a consumer’s interest in a timeshare plan where consummation occurs after the third business day from receipt of the consumer’s application as it will be for consumers in transactions secured by real property. Accordingly, the Bureau declines to revise § 1026.37(a)(2) and is adopting it as proposed, pursuant to the legal authority described above and in the proposal.

38(a)(3) Closing Information

Appendix A to Regulation X currently requires the settlement agent to include in the RESPA settlement statement basic information about the settlement process, including the name of the settlement agent, the place of settlement, the property location, and the settlement date. In addition to this information, with the exception of the place of settlement, proposed § 1026.38(a)(3) would have required creditors to disclose: (1) the date the Closing Disclosure is issued; (2) the dates funds are disbursed to the seller and consumer, as applicable; (3) the sale price of the property that is the subject of the transaction; and (4) the file number assigned to the transaction by the closing agent. All of the aforementioned information would be located under the heading "Closing Information." The Bureau stated its belief in the proposal that this information and the additional information discussed below effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The Bureau did not receive any comments on § 1026.38(a)(3) and is adopting it as proposed, pursuant to the legal authority described above and in the proposal. The specific requirements of the disclosure proposed in § 1026.38(a)(3) will be discussed below.

38(a)(3)(i) Date Issued

Proposed § 1026.38(a)(3)(i) would have required the creditor to disclose the date the disclosures required for transactions subject to § 1026.19(f) are issued to the consumer, labeled "Date Issued." Proposed comment § 1026.38(a)(3)(i)-1 would have cross-referenced the commentary to proposed § 1026.37(a)(4).

A document preparation company commenter requested guidance on whether to disclose the date the form is printed or the date the form is mailed to the consumer. A national settlement company requested guidance on which date to disclose if the Closing Disclosure is printed at settlement or is printed after consummation for a purpose other than providing notice to the consumer. The same commenter also suggested that the Bureau add a space for disclosure of the time the disclosure is issued to the consumer, in the event that a creditor delivers more than one disclosure to a consumer in one day.

Regarding which date to disclose on the Closing Disclosure, as stated in proposed comment 37(a)(4)-1, the date issued is the date the form is delivered to the consumer, regardless of the method of delivery. In response to the request for guidance on how to disclose the date of a form printed after consummation, under § 1026.38(a)(3)(i), the Bureau believes that the regulation text is clear that the date to be disclosed is the date of delivery, regardless of whether it is printed after consummation for some other purpose. Lastly, with respect to the suggestion to permit disclosure of the time the Closing Disclosure is printed, while the Bureau understands that there may be instances in which a Closing Disclosure is revised and delivered to the consumer more than once in a single day, the Bureau believes that including the time may result in information overload and that consumers in most cases would only need to know the date the Closing Disclosure was issued. Accordingly, the Bureau is adopting § 1026.38(a)(3)(i) and comment 38(a)(3)(i)-1 as proposed.

38(a)(3)(ii) Closing Date

Proposed § 1026.38(a)(3)(ii) would have required the creditor to disclose the consummation date for the mortgage loan transaction, labeled “Closing Date.” A national settlement company and a large bank both commented that the consummation date can only be an estimate at the time the Closing Disclosure is delivered, especially given the consumers right to waive the three-day waiting period between delivery of the Closing Disclosure and consummation under limited circumstances. The commenters requested that § 1026.38(a)(3)(ii) expressly permit disclosure of an estimated consummation date.

The commenters are correct that given the requirement that the Closing Disclosure be provided so that it is received by the consumer three days before consummation under § 1026.19(f)(1)(ii), the consummation date may, in some transactions, change after the delivery of the Closing Disclosure. However, § 1026.19(f)(1)(i) requires creditors to use the best information reasonably available to them to complete the Closing Disclosure and thus, the closing date disclosed under § 1026.38(a)(3)(ii) would be based on that best information. Moreover, under the requirements of § 1026.19(f)(2), if the disclosure previously provided becomes inaccurate, the creditor would be required to deliver a revised Closing Disclosure at consummation and the revised Closing Disclosure would therefore disclose the actual consummation date. Accordingly, either consummation of the transaction will occur on the date the creditor initially disclosed and be accurate, or the creditor will be required to revise the Closing Disclosure to reflect the date on which consummation actually occurs. In either case, the Closing Disclosure will reflect the actual date of consummation and not an estimate. Accordingly, the Bureau is adopting § 1026.38(a)(3)(ii) as proposed. Section § 1026.38(a)(3)(ii) requires disclosure of the date of consummation of the transaction. Current § 1026.2(a)(13) defines "consummation" for purposes of Regulation Z as "the time that a consumer becomes contractually obligated on a credit transaction." See commentary to § 1026.2(a)(13) for additional guidance regarding the definition of consummation.

38(a)(3)(iii) Disbursement Date

Proposed § 1026.38(a)(3)(iii) would have required the disclosure of the date the amounts disclosed pursuant to proposed § 1026.38(j)(3)(iii) and (k)(3)(iii) are expected to be paid to the consumer and seller, respectively, labeled "Disbursement Date." A large bank commenter noted that because the consumer has the right, under limited circumstances, to waive the three-day waiting period between delivery of the Closing Disclosure and the closing, the disbursement date is necessarily an estimate and should be labeled "Estimated Disbursement Date." The Bureau notes that under § 1026.19(f)(1)(i), creditors are required to disclose the actual terms of the legal obligation, but where such information is not known to the creditor, creditors must disclose the best information reasonably available. Accordingly, under § 1026.38(a)(3)(iii), creditors may disclose the date the funds are expected to be paid to the consumer and seller using the best information reasonably available regarding such date. See the section-by-section analysis of § 1026.19(f)(1)(i) and its commentary for further discussion regarding the labeling of estimates on the Closing Disclosure. Accordingly, the Bureau declines to add the word "estimated" to the label "Disbursement Date." The Bureau is adopting § 1026.38(a)(3)(iii) substantially as proposed, but is modifying the provision to provide additional clarity regarding the required disclosure in transactions that are not purchase transactions under § 1026.37(a)(9). In such non-purchase transactions, creditors are required to disclose the date the amounts disclosed pursuant to § 1026.38(j)(2)(iii) or (t)(5)(vii)(B) are expected to be paid to the consumer or a third party.

38(a)(3)(iv) Settlement Agent

Proposed § 1026.38(a)(3)(iv) would have required disclosure of the identity of the settlement agent conducting the closing, labeled "Agent." Proposed comment 38(a)(3)(iv)-1 would have clarified that the name of the agency that employs the settlement agent should be provided in the disclosure required by § 1026.38(a)(3)(iv) and that the name of the individual conducting the closing is not required. Several industry commenters noted in response to the proposal that the label "Agent" was unclear given the numerous types of agents involved in a real estate transaction. In addition, GSE commenters noted that the proposal used the term "Settlement Agent" in the contact information table required under proposed § 1026.38(r), in contrast with the label proposed under § 1026.38(a)(3)(iv). The Bureau agrees that the label "Agent" was not sufficiently specific and did not conform with the contact information table in the proposed Closing Disclosure. Accordingly, the Bureau is revising the label for the disclosure required by § 1026.38(a)(3)(iv) to "Settlement Agent," to improve the consistency and clarity of the Closing Disclosure The Bureau is also revising final comment 38(a)(3)(iv)-1 to reflect the label "Settlement Agent" and to refer to the entity employing the settlement agent, rather than the agency, such that the term will cover settlement agents that are employed by entities that are not title insurance agents, such as law firms.

38(a)(3)(v) File Number

Proposed § 1026.38(a)(3)(v) would have required disclosure of the number assigned to the transaction by the closing agent for identification purposes, labeled "File #." A national settlement company requested that the Bureau add "Settlement" before the proposed label "File #" to clarify whose file number is disclosed on the Closing Disclosure. Because the file number disclosure is directly below the Settlement Agent disclosure on the Closing Disclosure, the Bureau believes that consumers will understand that the file number being disclosed is that of the Settlement Agent. Moreover, § 1026.38(a)(5)(v) requires that the creditor separately disclose its own loan identification number, under the label "Loan ID #" which further clarifies that the file number referred to on form H-25 is the settlement agent's. Accordingly, the Bureau is adopting

§ 1026.38(a)(3)(v) as proposed. The Bureau is also adding comment 38(a)(3)(v)-1 to clarify that the file number may contain any alpha-numeric characters and need not be limited to numbers.

38(a)(3)(vi) Property

Proposed § 1026.38(a)(3)(vi) would have required the street address of the property required to be disclosed under proposed § 1026.37(a)(6), labeled "Property." Proposed comment 38(a)(3)(iv)-1 would have cross-referenced the commentary to § 1026.37(a)(6), which provides guidance regarding the information that must be provided in response to this requirement when a standard property address is unavailable. A GSE commenter requested guidance on how to disclose personal property that secures a transaction under proposed § 1026.38(a)(3)(vi). That comment is addressed in the section-by-section analysis of § 1026.37(a)(6), in response to which the Bureau added comment 37(a)(6)-2 to provide that where personal property secures a transaction, a description of the personal property may be disclosed to the extent that it fits on the space provided for the disclosure on form H-24 for the Loan Estimate. The Bureau is adopting § 1026.38(a)(3)(vi) and comment 38(a)(3)(vi)-1 substantially as proposed but with modifications to clarify that, unlike with respect to the disclosure of personal property in connection with the Loan Estimate, personal property securing the transaction may be disclosed if it does not fit within the space provided on form H-25 by using an addendum to form H-25 for the Closing Disclosure. The Bureau believes that in connection with the consummation of the transaction, the consumer should be provided with this information to understand the final loan terms and costs of the transaction.

38(a)(3)(vii) Sale Price

In credit transactions where there is a seller, proposed § 1026.38(a)(3)(vii)(A) would have required disclosure of the contract sale price for the property identified in proposed

§ 1026.38(a)(3)(vii), labeled “Sale Price.” In transactions where there is no seller, proposed § 1026.38(a)(3)(vii)(B) would have required disclosure of the appraised value of the property in proposed § 1026.38(a)(3)(vi), labeled “Appraised Prop. Value.” Proposed comment 38(a)(3)(vii)-1 also would have provided that when there is no seller that is a party to the transaction, the value to be disclosed is that determined by the appraisal or valuation used to determine approval of the credit transaction, or if a more recent appraisal or valuation has been obtain by the creditor, the value determined by the more recent appraisal or valuation.

The Bureau did not receive any comments on proposed § 1026.38(a)(3)(vii)(A) and is adopting it as proposed. Several national trade associations representing mortgage lenders commented that in transactions without a seller, such as a refinance transaction, an appraisal is not always obtained and that § 1026.38(a)(3)(vii)(B) should permit disclosure of an estimated property value. A GSE commented that the value that should be disclosed is the one used for underwriting, regardless of whether there is a subsequent appraisal. The GSE commenter noted that other fees disclosed on the Closing Disclosure, such as mortgage insurance and loan level pricing adjustments, are tied to the loan-to-value ratio which is, in turn, determined by the value used for underwriting. The commenter stated that disclosing a value different than the one used for underwriting would render the disclosures on the Closing Disclosure misaligned and cause confusion for consumers and creditors. A GSE also requested guidance on whether to disclose the value of personal property in transactions where such property is valued separately from real property.

With respect to refinance transactions where an appraisal may not be obtained, the Bureau agrees that disclosing an estimated property value is permissible where an appraisal is not obtained and is revising comment 38(a)(3)(vii)-1 to permit disclosure of an estimated property value if the creditor has not obtained an appraisal. Revised comment 38(a)(3)(vii)-1 further provides that where an estimate, rather than an appraisal, is used, the label for the disclosure would be changed to "Estimated Prop. Value."

Regarding the GSE's comment that the value disclosed should be the one used for underwriting, the Bureau agrees that the value disclosed on the Closing Disclosure should be the one used for underwriting for the reasons suggested by the commenter. Accordingly, the Bureau is further revising comment 38(a)(3)(vii)-1 to revise the description of the requirement to disclose the most recent appraisal or valuation and clarify that § 1026.38(a)(3)(vii) requires disclosure of the appraisal or estimate used to determine approval of the credit transaction. Regarding the GSE's request for guidance on the disclosure of personal property, the Bureau addresses that comment in the section-by-section analysis of § 1026.37(a)(7), above. The Bureau added comment 37(a)(7)-2 to clarify that where personal property is included in the sale price of real property § 1026.37(a)(7) permits disclosure of the aggregate price without any reduction for the appraised or estimated value of the real property. The Bureau is adding comment 38(a)(3)(vii)-2 to cross-reference the guidance provided in comment 37(a)(7)-2 regarding the disclosure of personal property.

38(a)(4) Transaction Information

Proposed § 1026.38(a)(4) would have required the creditor to disclose the names and addresses of the parties to the transaction: the borrower, seller, and lender, as applicable. This information would appear under the heading "Transaction Information." As noted in the proposal, these disclosures are currently provided in the RESPA settlement statement. *See* appendix A to Regulation X. In addition, TILA section 128(a)(1) and Regulation Z § 1026.18(a) require disclosure of the identity of the creditor. The Bureau stated its belief in the proposal that these disclosures effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Proposed comment 38(a)(4)-1 would have clarified that the name and address for each consumer and seller must be provided and referred creditors to the commentary to proposed § 1026.37(a)(5) for further guidance. Proposed comment 38(a)(4)-1 also would have clarified that the name and address of each consumer must be provided and that if the form does not provide enough space to include the required information for each seller, an additional page with that information may be appended to the end of the form, provided the creditor is in compliance with proposed § 1026.38(t)(3). Proposed comment 38(a)(4)-1 also would have cross-referenced commentary to § 1026.37(a)(5) for guidance on how to disclose multiple borrowers. Proposed comment 38(a)(4)-2 would have clarified that, in transactions where there is no seller such as in a refinancing or home equity loan, the creditor must provide the name of the person or persons primarily liable under the obligation or who have a right of rescission. Finally, proposed comment 38(a)(4)-3 would have cross-referenced the commentary to proposed § 1026.37(a)(3) for information regarding the identification of multiple creditors.

A GSE commented that the heading "Transaction Information" is misleading because the information disclosed relates only to the parties to the transaction. Two document preparation company commenters requested guidance on who meets the definition of "creditor" and is therefore required to be disclosed under proposed § 1026.38(a)(4).

With respect to the heading "Transaction Information," as discussed elsewhere in this section-by-section analysis, the Bureau extensively tested the integrated disclosures with consumers and found no evidence that consumers were confused by this heading. Accordingly, the Bureau declines to revise the heading "Transaction Information" required under § 1026.38(a)(4). Regarding the request for guidance on which creditor is required to be disclosed, the definition of "creditor" is addressed by § 1026.2(a)(17) and its accompanying commentary. The Bureau notes that comment 38(a)(4)-3 cross-references § 1026.37(a)(3) and its commentary for guidance. The Bureau also notes the existing guidance regarding transactions with multiple creditors under comment 17(d)-1 which is cross-referenced in commentary to § 1026.37(a)(3), and therefore believes adequate guidance is provided in the regulation as proposed. Because the Bureau continues to believe that disclosing the described transaction information will effectuate the purposes of TILA and RESPA, it is adopting § 1026.38(a)(4) as proposed. The Bureau did not receive any comments on comments 38(a)(4)-1 through -3 and is adopting them substantially as proposed but with minor modifications for clarity.

38(a)(5) Loan Information

Proposed § 1026.38(a)(5) would have required the creditor to provide certain information about the mortgage loan that is the subject of the transaction. With the exception of the mortgage insurance case number required by proposed § 1026.38(a)(5)(vi), all of the disclosures required under proposed § 1026.38(a)(5) mirror the disclosures required by proposed § 1026.37(a)(8) through (12). In the proposal, the Bureau stated its belief that these disclosures effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Proposed comment 38(a)(5)-1 would have referred the creditor to the commentary to proposed § 1026.37(a)(8) through (12) for further guidance on the general requirements and definitions applicable to proposed § 1026.38(a)(5)(i) through (v). The disclosures required by proposed § 1026.38(a)(5) appear under the heading “Loan Information.” Comments received in relation to the disclosures required by § 1026.37(a)(8) through (12) that are mirrored in § 1026.38(a)(5) are addressed in the section-by-section analyses of § 1026.37(a)(8) through (12). The Bureau did not receive any comments on proposed § 1026.38(a)(5) and comment 38(a)(5)-1 and is adopting them as proposed.

38(a)(5)(i) Loan Term

Proposed § 1026.38(a)(5)(i) would have required disclosure of the term of the loan, consistent with proposed § 1026.37(a)(8) and labeled “Loan Term.” The Bureau did not receive any comments regarding § 1026.38(a)(5)(i) not already discussed in the section-by-section analysis of § 1026.37(a)(8). The Bureau continues to believe § 1026.38(a)(5)(i) will effectuate the purposes of TILA and RESPA and is adopting § 1026.38(a)(5)(i) as proposed.

38(a)(5)(ii) Purpose

Proposed § 1026.38(a)(5)(ii) would have required disclosure of the purpose of the loan, consistent with proposed § 1026.37(a)(9) and labeled “Purpose.” The Bureau did not receive any comments regarding § 1026.38(a)(5)(ii) not already discussed in the section-by-section analysis of § 1026.37(a)(9) and continues to believe that § 1026.38(a)(5)(ii) will effectuate the purposes of TILA and RESPA. Accordingly, the Bureau is adopting § 1026.38(a)(5)(ii) as proposed.

38(a)(5)(iii) Product

Proposed § 1026.38(a)(5)(iii) would have required disclosure of the loan product, consistent with proposed § 1026.37(a)(10) and labeled "Product." The Bureau did not receive any comments regarding § 1026.38(a)(5)(iii) not already discussed in the section-by-section analysis of § 1026.37(a)(10) and continues to believe that § 1026.38(a)(5)(iii) will effectuate the purposes of TILA and RESPA. Accordingly, the Bureau is adopting § 1026.38(a)(5)(iii) as proposed.

38(a)(5)(iv) Loan Type

Proposed § 1026.38(a)(5)(iv) would have required disclosure of the loan type, consistent with proposed § 1026.37(a)(11) and labeled "Loan Type." The Bureau did not receive any comments regarding § 1026.38(a)(5)(iv) not already discussed in the section-by-section analysis of § 1026.37(a)(11) and continues to believe that § 1026.38(a)(5)(iv) will effectuate the purposes of TILA and RESPA. Accordingly, the Bureau is adopting § 1026.38(a)(5)(iv) as proposed.

38(a)(5)(v) Loan Identification Number

Proposed § 1026.38(a)(5)(v) would have required disclosure of the loan identification number, consistent with § 1026.37(a)(12) and labeled "Loan ID #." Comments received in relation to the loan identification number disclosure generally are discussed in the section-by-section analysis of § 1026.37(a)(12). One document preparation company commenter requested that the disclosure of the loan identification number on the Closing Disclosure be permitted to differ from that on the Loan Estimate because the identifying number used may be one used by the settlement company, rather than the lender.

Notwithstanding the fact that a settlement company may use an identification number for a transaction that differs from that used by the creditor, the Bureau believes that disclosing the same identification number on the Loan Estimate and the Closing Disclosure is beneficial for consumers who wish to compare the Closing Disclosure to the Loan Estimate. The settlement company would not be required, however, to use the identification number disclosed on the Loan Estimate and the Closing Disclosure in its own systems and can list its identification number under § 1026.38(a)(3)(v).

The Bureau continues to believe that disclosure of a loan identification number will promote the informed use of credit, and accordingly, is adopting § 1026.38(a)(5)(v) as proposed. The Bureau is also adding comment 38(a)(5)(v)-1 to clarify that the identification number disclosed on the Closing Disclosure must be one that enables the creditor, consumer, and other parties to identify the transaction as the same transaction that was disclosed on the Loan Estimate under § 1026.37. The Bureau has also clarified in the comment that the loan identification number may contain any alpha-numeric character, which means that the identification number need not be limited to numbers.

38(a)(5)(vi) Mortgage Insurance Case Number

The mortgage insurance case number currently is disclosed in section B of the RESPA settlement statement. *See* appendix A to Regulation X. Proposed § 1026.38(a)(5)(vi) would have incorporated this disclosure into the Closing Disclosure, labeled “MIC #.” A national settlement company commented that the label “MIC #” would be confusing to consumers. The Bureau extensively tested the integrated disclosures with consumers and did not find that the proposed label “MIC #” detracted from consumer understanding of the loan transactions. The Bureau believes that to the extent consumers do not understand the acronym, they can find such information from other sources, such as the Bureau’s website, the creditor’s or mortgage broker’s loan officer, the settlement agent, or real estate agents. The Closing Disclosure will contain a statement referring consumers to the Bureau's website to obtain more information next to a graphic depiction of a question mark, which consumer testing conducted by the Bureau indicated drew consumers' attention to the notice. *See* Kleimann Testing Report at 224. Accordingly, the Bureau believes that consumers will have available information regarding this information in the disclosure should they have questions. For the aforementioned reasons, the Bureau is adopting § 1026.38(a)(5)(vi) as proposed.

38(b) Loan Terms

For transactions subject to § 1026.19(f), proposed § 1026.38(b) would have implemented the requirements of TILA section 128(a)(6), (a)(11), and (b)(2)(C)(ii) by requiring creditors to disclose on the Closing Disclosure the table of key loan terms provided on the Loan Estimate pursuant to proposed § 1026.37(b). This information includes the loan amount; interest rate; periodic principal and interest payment; whether the loan amount, interest rate, or periodic payment may increase; and whether the loan has a prepayment penalty or balloon payment. For a detailed description of the Bureau's implementation of these statutory provisions and its legal authority for this final rule, see the section-by-section analysis of § 1026.37(b). The requirements of proposed § 1026.38(b) generally would have mirrored those of § 1026.37(b). Proposed comment 38(b)-1 would have provided a cross-reference to the commentary to § 1026.37(b) for guidance on the disclosures required by § 1026.38(b). The Bureau did not receive any comments on proposed § 1026.38(b) or its associated commentary not already discussed in the section-by-section analysis of § 1026.37(b) and is adopting § 1026.38(b) and its accompanying commentary as proposed.

38(c) Projected Payments

Proposed § 1026.38(c) would have implemented the requirements of TILA section

128(a)(6), (a)(16), (b)(2)(C), and (b)(4) for transactions subject to proposed § 1026.19(f), by requiring creditors to disclose on the Closing Disclosure the periodic payment or range of payments, together with an estimate of the taxes, insurance, and assessments and the payments to be made with escrow account funds. 15 U.S.C. 128(a)(6), (a)(16), (b)(2)(C), (b)(4). The requirements of proposed § 1026.38(c) generally would have mirrored those of proposed § 1026.37(c), with certain exceptions which are discussed below. Accordingly, proposed comment 38(c)-1 would have directed creditors to § 1026.37(c) and its commentary for guidance on the disclosures required by § 1026.38(c). For a detailed description of the Bureau's implementation of these statutory provisions and the Bureau's legal authority, see the section-by-section analysis of § 1026.37(c) above. As discussed below in the section-by-section analysis of § 1026.38(t), the items that would have been required to be disclosed pursuant to § 1026.38 would have been actual terms and costs, as required by proposed § 1026.19(f).

Proposed § 1026.38(c) would have differed from proposed § 1026.37(c) in several ways. First, proposed § 1026.38(c)(2) would have required an additional reference to the information required by proposed § 1026.38(l)(7). The proposal noted the Bureau's belief, based on consumer testing, that this additional reference would help consumers to understand the specific payment amounts to be made with escrow funds and those that must be paid separately by the consumer. Second, proposed § 1026.38(c) would have provided different rules for estimating escrow payments. As discussed in the section-by-section analysis of proposed § 1026.37(c), the Dodd-Frank Act amended TILA to add new requirements regarding the disclosure of escrow payments in consumer credit transactions secured by a first mortgage on the principal dwelling of the consumer, other than an open-end credit plan or reverse mortgage. Specifically, TILA section 128(b)(4)(A) provides that the disclosures required by TILA section 128(a)(6) must take into account the amount of any monthly payment to an escrow account, in accordance with section 10(a)(2) of RESPA. 15 U.S.C. 1638(b)(4)(A); 12 U.S.C. 2609(a)(2). In addition, new TILA section 128(b)(4)(B) generally requires creditors to take into account the taxable assessed value of the property during the first year after consummation, including the value of any improvements constructed or to be constructed on the property, if known, and the replacement costs of the property for hazard or flood insurance, when disclosing estimated escrow payments pursuant to TILA section 128(b)(4)(A). 15 U.S.C. 1638(b)(4)(B). For the Loan Estimate provided to consumers near the time of application, proposed § 1026.37(c) generally would have incorporated these statutory provisions, but would have expanded the requirements to all transactions subject to § 1026.37(c). However, the proposal noted the Bureau’s belief that separate treatment is required for the Closing Disclosure because the statutory requirements may conflict with certain provisions of Regulation X, which implements the provisions of RESPA sections 6(g) and 10, regarding the administration of escrow accounts. 12 U.S.C. 2605(g), 2609.

Current Regulation X § 1024.17(c)(7) specifies how a creditor conducting an escrow account analysis must estimate disbursement amounts. If the creditor knows the charge for a particular escrow item, the creditor must use that amount in estimating the disbursement. If the charge is unknown, the creditor may base the estimate on the preceding year’s charge, but may adjust the estimate to account for inflation. The Regulation X requirement that the creditor use actual charges, if known, in estimating escrow payment amounts may conflict with the TILA section 128(b)(4)(B) requirement that the creditor take into account the replacement costs of the property for hazard insurance when determining the estimated escrow amount. Under the plain language of TILA section 128(b)(4)(B), a creditor must base estimated escrows for hazard insurance on the replacement costs of the property, even if it knows that the actual charges will be different. The proposal noted that while the Bureau believes that the TILA requirement for estimating escrow payments is appropriate for the Loan Estimate because it requires creditors to use a uniform standard for estimates and therefore facilitates comparison, the disclosure of actual payment amounts, when known, is more appropriate for the Closing Disclosure.

Accordingly, the Bureau proposed to use its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to modify the requirements of TILA section 128(b)(4)(B) for the estimation of escrow payment amounts on the Closing Disclosure. Proposed § 1026.38(c) would have provided that, in disclosing estimated escrow payments as described in § 1026.37(c)(2)(iii) and (4)(ii), the amount disclosed on the Closing Disclosure: (1) for transactions subject to RESPA, is determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17, and (2) for transactions not subject to RESPA, may be determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17, or in the manner set forth in § 1026.37(c)(5). Comment 38(c)(1)-1 would have clarified that the amount of estimated escrow payments disclosed on the Closing Disclosure is accurate if it differs from the estimated escrow payment disclosed on the Loan Estimate due to the escrow account analysis described in Regulation X, 12 CFR 1024.17. The Bureau noted its belief that the proposed modification would effectuate the purposes of TILA by promoting the informed use of credit by allowing disclosure of actual escrow amounts for hazard insurance, when known. Additionally, the Bureau noted its belief that the proposed modification would ease compliance burden for creditors. In particular, permitting creditors in transactions not subject to RESPA to rely on the accounting rules described in Regulation X, 12 CFR 1024.17, to calculate the escrow payment disclosure would avoid requiring creditors to follow a separate disclosure requirement for the relatively small number of transactions that are subject to TILA but not RESPA. The Bureau also noted that the proposed modification will also improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau also noted its belief that the disclosure would ensure that the features of consumer credit transactions secured by real property 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, consistent with Dodd-Frank Act section 1032(a).

The Bureau received a number of comments on the projected payments table from industry and consumer advocacy groups. Those comments are generally discussed above in the section-by-section analysis of § 1026.37(c). The Bureau has considered those comments and made certain adjustments to the rules regarding the projected payments table in response to those comments and for additional clarity, as discussed above. Because the requirements of proposed § 1026.38(c) generally would have mirrored those of proposed § 1026.37(c), with certain exceptions outlined above, the comments received regarding the projected payments table are generally applicable to the projected payments table under § 1026.38(c). In addition, one industry trade association commenter argued that, unlike the Loan Estimate where estimated escrow payments should always be disclosed, loans with no escrow account do not need escrow information on a Closing Disclosure.

For the reasons discussed in the proposed rule, in the section-by-section analysis of § 1026.37(c), and below, the Bureau is adopting § 1026.38(c) as proposed, although the changes to the projected payments table described above in the section-by-section analysis of § 1026.37(c) also apply § 1026.38(c). The Bureau has considered the comment suggesting that loans with no escrow account do not need escrow information disclosed on the Closing Disclosure. However, as noted above in the section-by-section analysis of § 1026.37(c) and in the Kleimann Testing Report, consumer testing indicates that consumers view their total monthly payment as a key piece of information and that, even where no escrow account is established for the payment of taxes and insurance, the Bureau believes that information about such costs is an important measure of the consumer's ability to afford the transaction. *See* Kleimann Testing Report at 285. Absent such a disclosure, consumers may not fully comprehend the cost of their home loan on a periodic basis, and may not be as readily able to make an informed decision about whether to proceed with the transaction. Accordingly, the final rule requires creditors to disclose consumer's taxes, insurance, and assessment information on the table required by § 1026.38(c), even where no escrow account for the payment of such amounts will be established.

38(d) Costs at Closing

The Bureau's proposed § 1026.38(d) would have required the disclosure of the cash required from the consumer at consummation of the transaction, with a breakdown of the amounts of loan costs and other costs associated with the transaction under a heading of "Cash to Close." Under proposed § 1026.38(d)(1), the dollar amount due from the consumer would have been the same amount as calculated in accordance with proposed § 1026.38(j)(3)(iii) and would have been disclosed under a heading of "Cash to Close" and labeled "Cash to Close." The total dollar amount of the loan costs to be paid by the consumer at closing as calculated under proposed § 1026.38(f)(4) would have been disclosed under proposed § 1026.38(d)(2) with a description of "Loan Costs." The total dollar amount of the other costs to be paid by the consumer at closing as calculated under proposed § 1026.38(g)(5) would have been disclosed under proposed § 1026.38(d)(3) with a description of "Other Costs." The amount of lender credits disclosed under § 1026.38(h)(3) would have been disclosed under § 1026.38(d)(4) with a description of "Lender Credits." The sum of the amounts disclosed under § 1026.38(d)(2), 1026.38(d)(3), and 1026.38(d)(4) would have been disclosed with a description of "Closing Costs" under § 1026.38(d)(5). A statement directing the consumer to refer to the tables required under § 1026.38(f) and (g) for more details would have been required under § 1026.38(d)(6).

As more fully discussed in the section-by-section analysis of proposed § 1026.37(d) and (h), above, and § 1026.38(e), below, several commenters stated that the cash to close amount would be difficult for consumers to understand, especially in the case of a cash-out refinance transaction where the cash to close amount disclosed under proposed § 1026.38(d)(1) would have been negative. These commenters stated that consumers would have difficulty in understanding negative numbers in this context. The Bureau, in response to these comments, conducted additional qualitative testing of the proposed integrated disclosures using a sample refinance transaction in which a consumer would receive cash at consummation, in which case the cash to close would be disclosed as a negative amount, and a modified version of the integrated disclosures with an alternative table that would use checkboxes to denote that cash was received at consummation. As described in the section-by-section analysis of § 1026.37(d) above, based on the comments received and this qualitative testing, the Bureau believes that disclosing a positive cash to close amount with a checkbox to denote that cash will be received will be more understandable to consumers than disclosing a negative amount for the cash to close. In addition, as also described in the section-by-section analysis of § 1026.37(d) above, in response to comments received regarding the proposed cash to close tables under §§ 1026.37(d) and 1026.38(d) and the results of one question in the Bureau's Quantitative Study regarding the total closing costs amount, the Bureau tested with consumers a revised cash to close table on page 1 of the Loan Estimate and Closing Disclosure to place equal emphasis on the total closing costs amount and the cash to close amount for consumers, rather than placing the total closing costs amount embedded in text to the right of the cash to close amount as it was in the proposed Loan Estimate and Closing Disclosure. *See* Kleimann Post-Proposal Testing Report at 51-52, 58, 62, 71; Kleimann Quantitative Study at 74. This table included a revised heading, "Costs at Closing." Based on the comments received and its consumer testing, the Bureau believes this modification to the cash to close table enhances consumer understanding of the transaction.

Accordingly, the Bureau is adopting § 1026.38(d) as revised from proposed § 1026.38(d) to revise the heading to "Costs at Closing," and to include two separate rows: the first row contains the total closing costs, loan costs, other costs, and lender credits in connection with the transaction, as well as a reference to the closing cost details under § 1026.38(f), (g), and (h) (disclosed on page 2 of the Closing Disclosure); and the second row contains the cash to close amount, a statement that the cash to close amount includes closing costs, and a reference to the calculating cash to close table under § 1026.38(i) (disclosed on page 3 of the Closing Disclosure), as illustrated by form H-25 of appendix H to Regulation Z. In addition, § 1026.38(d) as revised provides for an alternative cash to close disclosure for transactions without a seller, consistent with the provisions of § 1026.37(d) and (h) and § 1026.38(e). As a result of these revisions, the cash to close disclosure under proposed § 1026.38(d), is adopted in § 1026.38(d)(1), which will use cross-references from the provisions of § 1026.38(f), (g), and (h) for the amounts to be disclosed. The alternative cash to close disclosure under § 1026.38(d)(2) must be provided for transactions without a seller when the Loan Estimate is disclosed with the optional alternative table pursuant to § 1026.37(d)(2). The alternative cash to close disclosure under § 1026.38(d)(2) will use cross-references from the provisions of § 1026.38(e) for the amounts to be disclosed. The Bureau also is adopting comments 38(d)(2)-1, which clarifies that the use of the alternative cash to close disclosure under § 1026.38(d)(2) must be used when the alternative calculating cash to close table under § 1026.38(e) is used; and 38(d)(2)-2, which provides an example of how the indication of whether the cash is due from or to the consumer can be disclosed with the use of checkboxes, as shown in form H-25(J) of appendix H.

Pursuant to its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank section 1032(a), the Bureau requires creditors to provide the actual total closing costs imposed upon the consumer and the amount of the cash required at consummation from the consumer. This disclosure will promote the informed use of credit and consumer understanding of the costs, benefits, and risks associated with the loan because it will indicate to the consumer the amount the consumer will pay at consummation of the credit transaction and closing of the real estate transaction.

38(e) Alternative Calculating Cash to Close Table for Transactions Without a Seller

As discussed in the section-by-section analyses of §§ 1026.37(d) and (h) and 1026.38(d) and (i), the Bureau is adopting an alternative Calculating Cash to Close table for use in a transaction without a seller in response to the comments received that expressed concerns regarding the proposed calculation’s understandability for consumers in refinance transactions, and the disclosure of a negative cash to close amount for transactions in which a consumer would receive cash from a refinance transaction. The Bureau developed and conducted qualitative consumer testing of an alternative Calculating Cash to Close table after reviewing these comments. The Bureau’s consumer testing of the alternative table demonstrated greater consumer comprehension and the alternative table proved to be readily understood by consumers for transactions without a seller. *See* Kleimann Post-Proposal Testing Report at 58, 71.

Accordingly, the Bureau adopts § 1026.38(e) to require an alternative calculating cash to close table for transactions without a seller when the Loan Estimate was disclosed with the optional alternative Calculating Cash to Close table permitted under § 1026.37(h)(2). The Bureau is requiring use of the alternative Calculating Cash to Close table permitted under § 1026.38(e) if the optional alternative table under § 1026.37(h)(2) is used because the Bureau designed the tables to match information and content. The Bureau has designed the Loan Estimate and Closing Disclosure generally to match, to enable easier comparison of estimated and final numbers for consumers. The Bureau's Quantitative Study determined that consumer participants using the Bureau's integrated disclosures performed statistically significantly better than consumer participants using the current disclosures at comparing estimated and final loan terms costs. *See* Kleimann Quantitative Study Report at 68. The Bureau believes this increased performance is due, in part, to the matching designs of the Loan Estimate and Closing Disclosure. Accordingly, the Bureau has determined to require the alternative Calculating Cash to Close table permitted under § 1026.38(e) if the optional alternative table under § 1026.37(h)(2) is used, because use of a similar format and content for the table on both the Loan Estimate and the Closing Disclosure will enable consumers to compare changes more easily between the estimated and final terms and costs, aiding consumer understanding of the transaction, which is one of the purposes of the integrated disclosures under Dodd-Frank Act sections 1098 and 1100A.

The alternative table under § 1026.38(e) discloses the loan amount, total closing costs, amount of closing costs paid before closing, payoffs and payments, the total amount of cash to or from the consumer, and the closing costs financed. These items, with the exception of closing costs financed, would be disclosed with three columns: the first to disclose the corresponding amounts from the Loan Estimate under § 1026.37(h)(2); the second to disclose amounts from § 1026.38(f), (g), and (t)(5)(viii)(B); and the final column to disclose whether the amounts change, with additional statements providing more information to the consumer about the change. The disclosure of the closing costs financed, because it is not part of the calculation of the cash to close in the alternative table, is not disclosed as a row in the table, but instead, disclosed in the bottom right of the table. The calculation of the closing costs financed amount in the alternative table under § 1026.38(e) is the same as under § 1026.37(h)(2)(v), except that the sum of closing costs designated borrower-paid before closing under § 1026.38(h)(2) are subtracted from the amount, because those costs are not paid from loan funds. The consumer has made payment for those charges before the loan was consummated. The Bureau is adopting comment 38(e)-1 to clarify that the optional use of the alternative table must be made in conjunction with the alternative disclosure under § 1026.38(d)(2). Based on its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), the Bureau is requiring the creditor in a transaction without a seller to provide an alternative Calculating Cash to Close table in lieu of disclosing the table required by § 1026.38(i) when the alternative Calculating Cash to Close table was disclosed pursuant to § 1026.37(h)(2) which highlights the cash to close amount and its critical components and compares those amounts to the corresponding disclosures shown on the Loan Estimate under § 1026.37(h). The Bureau believes that this disclosure will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and timelier information on the costs of the closing process. Providing consumers with information about the cash to close amount, its critical components, and how such amounts changed from the estimated amounts disclosed on the Loan Estimate helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

38(f),(g), and (h) Closing Cost Details

The Bureau's proposed § 1026.38(f), (g), and (h) would have required the creditor or closing agent to disclose the details of the closing costs at closing and totals of those costs. The costs related to the consummation of the credit transaction and the closing of the real estate transaction would have been disclosed under § 1026.38(f), (g), and (h), as discussed below, regardless of the person responsible for paying the cost. Currently, RESPA section 4(a) requires that the forms published by the Bureau "shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement . . . ." 12 U.S.C. 2603(a). The current RESPA settlement statement used in residential real estate transactions is promulgated under Regulation X § 1024.8, with instructions in appendix A to Regulation X.

As discussed above, Dodd-Frank Act sections 1032(f), 1098, and 1100A require the Bureau to integrate these RESPA disclosures with the disclosures required by TILA. However, section 1419 of the Dodd-Frank Act amended TILA section 128(a) also to require, in the case of a residential mortgage loan, disclosure of the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. 15 U.S.C. 1638(a)(17).

Many of the comments submitted to the Bureau related to § 1026.38(f) and (g) concern the same issues raised in comments received concerning § 1026.37(f) and (g). To the extent that similar comments addressed an issue that was more fully discussed in response to comments related to § 1026.37(f) and (g), the discussion of the comments received related to § 1026.38(f) and (g) will include only summaries of comments and refer to the section-by-section analyses of § 1026.37(f) and (g), unless there is a specific reason that the comment needs to be addressed in the context of the Closing Disclosure.

Generally, the Bureau is adopting the requirements of § 1026.38(f), (g), and (h) as proposed, with modifications to some provisions and additional commentary to address comments received as discussed below. Pursuant to its authority under Dodd-Frank Act section 1032(a) and (f), TILA section 105(a), and RESPA section 19(a), the Bureau is requiring creditors to provide the loan costs and other costs imposed upon the consumer and the seller in tables as part of the integrated Closing Disclosure for closed-end transactions secured by real property (other than reverse mortgages). Based on its consumer testing, the Bureau believes that the disclosure of loan costs and other costs in the format illustrated in form H-25 of appendix H to Regulation Z will improve consumer understanding of the loan costs and other costs being imposed. The Bureau tested several different prototype formats for disclosing actual closing costs on the Closing Disclosure, including prototypes that were similar in format to the current RESPA settlement statement, with a similar three- and four-digit line numbering system, and other prototypes that more closely matched the Loan Estimate. Consumer participants at the Bureau's consumer testing performed better at identifying closing costs, including whether closing costs had changed between the estimated and actual amounts, when using a format for closing costs that closely matched that of the Loan Estimate. Participants gained a familiarity with the organization of closing costs on the Loan Estimate and benefited from this experience when engaging with the Closing Disclosure. In addition, consumer participants often placed the

Loan Estimate and Closing Disclosure prototypes side-by-side to compare the closing costs, and this method of comparing the two disclosures was better enabled and assisted by a closely matching organization of closing costs between them. Accordingly, pursuant to § 1026.38(t) and illustrated by form H-25, the Bureau is requiring a format for the disclosure of closing cost information required by § 1026.38(f) and (g) that closely matches the format and organization of the closing cost information on the Loan Estimate.

This format of form H-25 also uses a different line numbering system than that of the current RESPA settlement statement. Both consumer and industry participants at the Bureau's qualitative testing before issuance of the proposal stated that line numbers would be useful to facilitate conversations between consumers, creditors, and other participants in the credit transaction and underlying real estate transaction. However, consumer participants at the Bureau's testing appeared overwhelmed by the three- and four-digit line numbers on the prototypes similar to the current RESPA settlement statement, and performed worse with prototypes containing that system. *See* Kleimann Testing Report at 289. As discussed above in part III, the Bureau is particularly mindful of the potential risk of information overload for consumers, given the amount of numbers and complexity involved in the credit transaction and the underlying real estate transaction. Accordingly, in its qualitative testing before issuance of the proposal, the Bureau tested prototypes with a two-digit line numbering system, which performed better with both consumer and industry participants at the Bureau's testing, with some industry participants at the Bureau's testing preferring it over the system of the current RESPA settlement statement. *See* Kleimann Testing Report at 293. In addition, at the Bureau's Quantitative Study, consumer participants using the Bureau's integrated disclosures performed statistically significantly better than consumer participants using the current disclosures at comparing estimated and final loan terms costs. *See* Kleimann Quantitative Study Report at 67-71. The Bureau believes the matching organization of the closing costs on the Loan Estimate and Closing Disclosure, as well as the streamlined line numbering system, enabled consumers to better compare the estimated and final loan terms and costs. Accordingly, the format for the information required by § 1026.38(f) and (g), as required by § 1026.38(t) and illustrated by form H-25, also contains a matching organization between the Loan Estimate and Closing Disclosure, as well as a two-digit line numbering system that is different than the current RESPA settlement statement.

The Bureau believes that this disclosure will effectuate the purpose of TILA by promoting the informed use of credit and assuring a meaningful disclosure to consumers. The Bureau believes that this disclosure will also satisfy the purpose of RESPA to provide more effective advanced disclosure of settlement costs to both the consumer and the seller in the real estate transaction. In addition, consistent with section 1032(a) of the Dodd-Frank Act, this disclosure will ensure that the features of consumer credit transactions secured by real property 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.

During the Small Business Review Panel, several settlement agents and one mortgage company requested that the line numbers from the current RESPA settlement statement be retained, stating that using the revised line numbers in the prototype integrated Closing Disclosure would significantly increase programming costs. *See* Small Business Review Panel Report at 20, 28-9. Based on this feedback, the Bureau sought comment on whether the use of line numbers would lower software-related costs on industry and the exact amount of the savings given the rest of the changes in the integrated Closing Disclosure contemplated by the proposal, while also improving consumer understanding of the loan terms and costs at the consummation of the credit transaction and the closing of the real estate transaction.

Other than generalized statements and assertions, the Bureau did not receive comments that included data or factual information on the issues sought. Some industry commenters stated that the line numbers currently on the RESPA settlement statement are sometimes used for reference when discussing closing costs. However, even though the line numbers on the Closing Disclosure will be different and many are not directly attributable to a certain charge in all transactions, the line numbers on the Closing Disclosure still can be used in the same fashion. One document preparation/software industry commenter stated that changing the line numbers is a significant project on its own, but that the other changes to the forms will necessitate enough changes to the forms that changing the line number methodology would not be a significant part of any update to their system. Other document preparation/software industry commenters stated that mapping of the charges between the Loan Estimate and Closing Disclosure may be more difficult. However, difficulty in mapping for systems purposes does not mean that consumers will be more confused. To the contrary, consumer testing conducted by the Bureau generally indicates that consumers using the Closing Disclosure were better able to understand their final loan terms and costs than those using the current RESPA settlement statement. *See* Kleimann Quantitative Study Report at 67. A title company industry commenter stated that line numbering is important and retaining the current line numbers would not reduce costs since there is not a one-to-one correlation between the RESPA settlement statement and the Closing Disclosure, and therefore supported retaining the proposed line numbers to quickly guide consumers to specific items.

Some title company industry commenters stated that the line numbers are used to generate checks and issue reports. This, however, does not address consumer understanding, but rather the use of disclosure forms to simplify business practices. As with the RESPA settlement statement, the Bureau anticipates that industry will be able to utilize the Closing Disclosure for the same business practices. However, the purpose of the integrated disclosures under Dodd-Frank sections 1098 and 1100A is not to streamline business practices, but to assist consumers in understanding the transaction and facilitate compliance with applicable regulations. A document preparation/software industry commenter stated that neither of the provisions of proposed § 1026.38(f) nor (g) required the identification of the third party providing the service to be itemized on the Closing Disclosure. As demonstrated by the examples proposed in appendix H to Regulation Z, the Bureau intended that a third party ultimately receiving payment would be identified on the Closing Disclosure, as is currently required under current Regulation X on the RESPA settlement statement. *See* 12 CFR part 1024 appendix A. The Bureau has added this requirement into the regulatory text of § 1026.38(f) and (g), as applicable, to ensure that the required disclosures are made on the Closing Disclosure.

38(f) Closing Cost Details; Loan Costs

The Bureau proposed § 1026.38(f), which would have disclosed closing cost details under a master heading of "Closing Cost Details," with columns stating whether the charge is paid at or before consummation by the consumer or the seller, or paid by others. All loan costs in the credit transaction would have been disclosed in a table under a heading of "Loan Costs" in three subcategories. The Bureau did not receive comments on the design of the Closing Disclosure under § 1026.38(f). Two national trade association commenters stated that the proposed rule was unclear whether the amounts disclosed in the "paid by others" column were to include charges paid before or at closing, since the borrower and seller columns in form H-25 break out these designations in separate columns. The borrower and seller columns break out charges paid before or at closing because the distinction is essential to determine the amounts due to or from the consumer and seller at consummation. The same concern is not present for charges paid by parties other than the consumer or seller. Therefore, the "paid by others" column does not make such a distinction, and charges that are required to be disclosed on the Closing Disclosure, whenever paid, are itemized in the "paid by others" column. Accordingly, the Bureau is adopting § 1026.38(f) as proposed, with modifications and clarifications as identified below. The Bureau also is adopting comment 38(f)-1, which permits charges disclosed pursuant to § 1026.38(f) and (g) and designated as paid by others to include a notation of "(L)" to designate those charges paid by the creditor pursuant to the legal obligation between the creditor and the consumer for the reasons stated in the section-by-section analysis of § 1026.38(h)(3), below.

38(f)(1) Origination Charges

The first subcategory of loan costs would have been disclosed under the label "Origination Charges," which encompassed the same items as would have been disclosed on the Loan Estimate under proposed § 1026.37(f)(1), together with any compensation of a loan originator paid by the creditor. Each cost would have been disclosed in the appropriate column designated borrower-paid at or before closing, seller-paid at or before closing, or paid by others. Proposed comment 38(f)(1)-1 would have clarified that comments 37(f)(1)-1, -2 and -3 provide additional guidance for the charges listed under § 1026.38(f)(1). Proposed comment 38(f)(1)-2 would have clarified that all compensation paid to a loan originator must be disclosed under § 1026.38(f)(1) and that compensation from the creditor to a loan originator must be disclosed in the paid by others column. In addition, proposed comment 38(f)(1)-2 would have clarified that compensation from both the consumer and the creditor to the loan originator is prohibited under § 1026.36(d)(2). Proposed comment 38(f)(1)-3 would have clarified that any amount disclosed as paid from the creditor to the loan originator is calculated as the dollar value of all compensation to the loan originator and referred to comments 36(d)(1)-1, -2, -3 and -6 for further guidance on the components of compensation to a loan originator. The Bureau believed that the origination charges disclosed under proposed § 1026.38(f)(1) would have implemented TILA section 128(a)(18), as amended by Dodd-Frank Act section 1419, which requires disclosure of the aggregate amount of fees paid to the mortgage originator, the amount of those fees paid directly by the consumer, and any additional amount received by the originator from the creditor. The Bureau also noted that it was engaged in six other rulemakings that relate to mortgage credit and intended that the rulemakings function collectively as a whole. Accordingly, the Bureau noted it might have to modify the disclosure of origination charges under § 1026.38(f)(1) as appropriate for consistency with other rulemakings related to permissible mortgage loan originator compensation.

Alternatively, the Bureau invited comment on whether it should require itemization in the Closing Disclosure of fees received by loan originators from the creditor, and whether it should require itemization of any compensation paid by consumers to loan originators, which does not include creditors, in the Loan Estimate and Closing Disclosure. As discussed above with respect to § 1026.37(f)(1), the Bureau is using its authority under TILA section 105(a) and (f), RESPA section 19(a), and Dodd-Frank Act section 1405(b) to exempt the disclosures required by proposed § 1026.19(e) from the TILA section 128(a)(18) requirement that creditors disclose the amount of origination fees received by loan originators from the creditor. The Bureau sought comment on whether a similar exemption should be applied under proposed § 1026.38(f)(1).

Comments from industry stated the same comments as discussed in the section-by-section analysis of § 1026.37(f)(1) above regarding "negative discount points," itemizations for services provided by third parties, and requests for clarification of the level of itemization under proposed § 1026.38(f)(1). Industry commenters generally expressed concern regarding the requirement to disclose all compensation received by loan originators, including creditor-paid compensation.

Industry commenters stated that loan originator compensation should not be disclosed to protect the privacy of loan originators, some of whom are their employees. In addition, commenters stated that the disclosure of loan originator compensation would require the disclosure of trade secrets, and that the disclosure of loan originator compensation would not benefit consumers. Industry commenters also stated that loan originator compensation does not affect a consumer's loan terms. One large bank commenter specifically requested that the Bureau utilize its exemption authority under Dodd-Frank Act section 1405(b) to eliminate the disclosure of loan originator compensation from the requirements of the Closing Disclosure. Another community bank commenter stated that the disclosure of loan originator compensation is a de facto taking under the Fifth Amendment to the U.S. Constitution.

Lastly, a national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempts timeshare lenders from compliance with, among other things, TILA section 129C and any regulations promulgated thereunder.

Dodd-Frank Act section 1419 amended TILA section 128(a) to require the disclosure of all amounts received by loan originators in a transaction. Although the Bureau recognizes that industry has concerns about disclosing compensation to loan originators, the Bureau believes that the use of exemption authority to exempt creditors from disclosure of all loan originator compensation would be inappropriate, because information regarding certain loan originator compensation may be useful to consumers in understanding their transaction, or to facilitate compliance with other applicable requirements. In addition, the Bureau does not believe that this disclosure amounts to an unconstitutional taking of property. The mere disclosure of the amount a loan originator will receive in compensation cannot be interpreted to be the required relinquishment of a cognizable property interest by government action.[298] Lastly, with respect to the argument that the Closing Disclosure should not apply to timeshare lenders, the general section-by-section analysis of § 1026.19 provides a more detailed discussion of the Bureau's decision to expand the scope of some of the disclosure requirements set forth in TILA, as amended by the Dodd-Frank Act. The Bureau believes the disclosure of amounts received by third-party loan originators in a transaction would be just as useful to consumers obtaining a loan secured by a consumer's interest in a timeshare plan as it would be to consumers obtaining loans secured by real property.

Industry commenters also made statements concerning the disclosure of compensation paid by the creditor to a loan originator that were consistent with comments that they had provided in connection with other Bureau rulemakings concerning or dealing with loan

[298] "[T]he Government's imposition of an obligation between private parties, or destruction of an existing obligation, must relate to a specific property interest to implicate the Takings Clause." *Eastern Enterprises v. Apfel,* 524,U.S. 498, 544 (Kennedy, J., concurring). *See also Koontz v. St. Johns River Water Management Dist.*, 568 U.S. ____, 133 S.Ct. 2586, 2599-2600 (2013), available at: http://www.supremecourt.gov/opinions/12pdf/11-1447_4e46.pdf.

originator compensation. *See* 78 FR 6407 (Jan. 30, 2013), 78 FR 10367 (Feb. 13, 2013), 78 FR 35430 (June 12, 2013), and 78 FR 60382 (Oct. 1, 2013). In the proposed rule, the Bureau recognized that it may have to make adjustments to the items disclosed on the Closing Disclosure to reflect these matters or for consistency with determinations made in the Bureau's other mortgage rulemakings. The comments received in response to the proposed rule were extremely similar, if not the same, as the arguments of commenters discussed in the 2013 ATR Final Rule, the 2013 Loan Originator Final Rule, and the May 2013 ATR Final Rule, such as: that the identity of a loan originator is not needed to be disclosed, that the amount of loan originator compensation cannot be calculated on the date of consummation due to post-consummation events such as quarterly bonus and profit-sharing compensation, that the term compensation is unclear and overly broad, that the amount of compensation is difficult to calculate, and that compensation to loan originators can be double-counted because both upfront fees and future interest payments can be the source of the funds used for compensating loan originators. The extent to which loan originator compensation should be included in the definition of points and fees was the subject of considerable discussion in the Bureau's 2013 ATR Final Rule and May 2013 ATR Final Rule.[299] Because of the similar issues involved in whether loan originator compensation should be included in the definition of points and fees and disclosed on the integrated disclosures, the Bureau believes that the matters stated by commenters in response to the proposed rule were fully discussed and considered in the Bureau's 2013 ATR Final Rule and May 2013 ATR Final Rule.[300] In addition, the Bureau stated in the

[299] *See* 12 CFR 1026.32(b)(1)(ii) for amounts of loan originator compensation excluded from the definition of points and fees; and discussions of comments received concerning the issues identified in 78 FR 6408, 6432-6438 (Jan. 30, 2013); 78 FR 35430, 35442-35459 (June 12, 2013); and 78 FR 60382, 60408-60413 (Oct. 1, 2013).
[300] *Id.*

proposal that it may have to modify aspects of this proposed rule for consistency with determinations made in the other rulemakings. Based on this evaluation and the Bureau's belief that consistency between its mortgage rulemakings will facilitate compliance for industry, the Bureau is modifying the guidance provided in proposed comment 38(f)(1)-3 to reflect that the amount of loan originator compensation paid by a creditor to a loan originator will be calculated in accordance with the guidance provided in relation to § 1026.32(b)(1)(ii). The Bureau believes that this modification will facilitate compliance and assist consumer understanding of the transaction.

Accordingly, the Bureau is adopting § 1026.38(f)(1) with the addition of a requirement to provide the identity of any third-party loan originator that ultimately receives compensation from the creditor, and comment 38(f)(1)-1 and -2 as proposed with a modification to reflect payments from a creditor to a third-party loan originator. The Bureau is also adopting comment 38(f)(1)-3 with modifications to address comments about how to calculate the amount of compensation to a third-party loan originator paid by a creditor by referencing the calculation of creditor-paid compensation to the third-party loan originator for the purposes of determining the amount of points and fees associated with the transaction in accordance with § 1026.32(b)(1)(ii).

The Bureau is using its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to exempt from disclosure the amounts paid to the employee of a loan originator organization from the amounts disclosed under § 1026.38(f)(1). As stated above, the Bureau believes that the amounts of third-party loan originator compensation disclosed on the Closing Disclosure should be calculated in accordance with the amount of third-party loan originator compensation included in the points and fees calculation used by § 1026.32(b)(1)(ii), which does not include such employee compensation. The Bureau believes that consumers understand that employees are compensated by their employer, and do not require separate disclosure because the consumer is already paying the creditor. Accordingly, the Bureau believes the inclusion of such information on the Closing Disclosure will not aid consumer understanding of the transaction, and instead, may cause information overload for consumers. However, consumers may not understand that a third-party loan originator will be paid by the creditor in connection with the transaction, and thus, the disclosure of such compensation may aid consumer understanding of the transaction. In addition, the Bureau believes that using the calculation of § 1026.32(b)(1)(ii) to determine the amount of third-party loan originator compensation disclosed under § 1026.38(f)(1) will facilitate compliance by creditors with the 2013 ATR Final Rule, the May 2013 ATR Final Rule, and the second set of amendments to the Title XIV Rulemakings. *See* 78 FR 60382 (Oct. 1, 2013).

Accordingly, this disclosure will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The Bureau also believes such disclosure will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(f)(2) Services Borrower Did Not Shop For

The second subcategory of loan costs would have been disclosed under the label "Services Borrower Did Not Shop For." The costs of services that were required by the creditor and provided by persons other than the creditor for which the consumer could not or did not shop would have been disclosed under proposed § 1026.38(f)(2). Any additional items that were required by the creditor but were not disclosed on the Loan Estimate under proposed § 1026.37(f)(2) would have been disclosed under proposed § 1026.38(f)(2) when the consumer did not shop for the service under § 1026.19(e)(1)(vi). Each cost would have been disclosed in the appropriate column designated borrower-paid at or before closing, seller-paid at or before closing, or paid by others. Proposed comment 38(f)(2)-1 would have referred to comments 37(f)(2)-1 through -4 to provide additional guidance for the charges listed under proposed § 1026.38(f)(2).

Commenters made statements in relation to proposed § 1026.38(f)(2) that concerned matters of appraisal management fees, the perceived difficulty in how some charges would be categorized, and the disclosure of enhanced lender's title insurance policies, which are discussed in the section-by-section analysis of § 1026.37(f)(2) above. The Bureau did not receive other comments related to proposed § 1026.38(f)(2). Accordingly, the Bureau is adopting § 1026.38(f)(2) substantially as proposed. The Bureau is adding to § 1026.38(f)(2) a requirement to provide the identity of the person ultimately receiving the payment. The Bureau is also adopting comment 38(f)(2)-1 as proposed.

38(f)(3) Services Borrower Did Shop For

The third subcategory of loan costs would have been disclosed under the label "Services Borrower Did Shop For." The services required by the creditor but for which the consumer independently shopped would have been disclosed under proposed § 1026.38(f)(3). Each cost would have been disclosed in the appropriate column for borrower-paid at or before closing, seller-paid at or before closing, or paid by others. Proposed comment 38(f)(3)-1 would have clarified that all services that were disclosed under proposed § 1026.37(f)(3) that the consumer did not shop for under proposed § 1026.19(e)(1)(vi) are disclosed under proposed § 1026.38(f)(2), and not under proposed § 1026.38(f)(3).

The Bureau did not receive comments concerning proposed § 1026.38(f)(3). Accordingly, the Bureau is adopting § 1026.38(f)(3) substantially as proposed. The Bureau is adding to § 1026.38(f)(3) a requirement to provide the identity of the person ultimately receiving the payment. The Bureau is adopting comment 38(f)(3)-1 as proposed.

38(f)(4) and (5) Total Loan Costs and Subtotal of Loan Costs

With the label "Total Loan Costs (Borrower-Paid)," the total costs designated borrower-paid charges at closing and borrower-paid charges before closing would have been disclosed under proposed § 1026.38(f)(4). The costs disclosed under proposed § 1026.38(f)(1), (2), and (3) would have been subtotaled and disclosed in the appropriate column designated borrower-paid at or before closing under proposed § 1026.38(f)(5). Proposed comment 38(f)(5)-1 would have clarified that costs that are seller-paid at or before closing, or paid by others, are not subtotaled under proposed § 1026.38(f)(5), and that the subtotal of charges that are seller-paid at or before closing, or paid by others, would be disclosed under proposed § 1026.38(h)(2).

Several commenters stated that consumers and sellers may be confused if the seller-paid at closing, seller-paid before closing, and paid by other columns are treated differently than the borrower-paid columns, and therefore also should be subtotaled under proposed § 1026.38(f)(5). Consumer testing conducted by the Bureau did not indicate that consumers were confused because of a lack of subtotals in the seller-paid at closing, seller-paid before closing, and paid by other columns. Unless agreed to by contract, many of the costs disclosed in proposed § 1026.38(f) would not be paid by the seller, since the seller is not legally obligated to or required by the creditor to pay for such services. The seller's transaction is only with the consumer, and typically has fewer costs associated with consummation. Accordingly, the Bureau is adopting § 1026.38(f)(5) and its accompanying commentary as proposed, with a modification to the label required under § 1026.38(f)(5) to conform to H-25.

38(g) Closing Cost Details; Other Costs

Under proposed § 1026.38(g), all other costs in the credit transaction and the real estate transaction would have been disclosed in a table under the heading of "Other Costs" in four subcategories. Proposed comment 38(g)-1 would have referred to proposed comment 38(f)-1 and proposed comment 37(g)-1 to provide guidance related to proposed § 1026.38(g). The Bureau did not receive comments on proposed § 1026.38(g) or its accompanying commentary generally. Accordingly, the Bureau is adopting § 1026.38(g) and its accompanying commentary as proposed, with the modifications stated for the individual subcategories of other costs as specifically discussed, below.

38(g)(1) Taxes and Other Government Fees

The first subcategory would have been disclosed under the label "Taxes and Other Government Fees." The amount of recording fees and an itemization of transfer taxes would have been disclosed under proposed § 1026.38(g)(1). Proposed comment 38(g)(1)-1 would have referred to comments 37(g)(1)-1, -2, -3 and -4 for guidance on disclosures required under proposed § 1026.38(g)(1). Several commenters again stated concerns related to the definition of recording fees that are discussed in the section-by-section analysis of § 1026.37(g)(1) above. Several national industry trade association commenters stated that the disclosure of the split of recording fees between those required for recording the deed and mortgage would omit recording fees for other documents (such as powers of attorney and subordination agreements), and therefore the disclosed amount under proposed § 1026.38(g)(1) would not equal the sum of the two disclosed components. Some of these commenters suggested deleting the breakout between charges associated with recording the deed and the mortgage. The Bureau's consumer testing did not indicate that consumers were confused about the breakout. *See* Kleimann Testing Report at 186-87, 291. The Bureau believes that to introduce further breakouts would require additional space that may not be available on the form as tested and would not demonstrably change consumer understanding of the Closing Disclosure.

Several commenters stated that there are sometimes multiple transfer taxes that cannot be lumped together in one line. However, § 1026.38(g)(1) does not require all transfer taxes to be included on one line, unlike § 1026.37(g)(1). Additionally, § 1026.38(g)(1) expressly requires an itemization of transfer taxes, and reflects the actual division of transfer taxes between the consumer and seller, instead of transfer taxes that the consumer could pay that are disclosed in accordance with § 1026.37(g)(1), as any negotiations between the consumer and seller will be resolved by consummation.

Accordingly, the Bureau is adopting proposed § 1026.38(g)(1) and its accompanying commentary substantially as proposed, with a modification to § 1026.38(g)(1)(ii) to include the name of the government entity assessing the transfer tax to clarify that the identities of such entities are required to be disclosed. The Bureau is also adopting comment 38(g)(1)-2 to provide guidance clarifying that transfer taxes can be itemized by the creditor as provided in State or local law and the real estate purchase contract, to provide further clarity regarding the requirement to itemize transfer taxes.

38(g)(2) Prepaids

The second subcategory would have been disclosed under the label "Prepaids." The items that were identified under this label and stated with the actual costs in the applicable columns would have been disclosed under § 1026.38(g)(2). Proposed comment 38(g)(2)-1 would have referred to proposed comment 37(g)(2)-1 to provide guidance on disclosures required under proposed § 1026.38(g)(2). Proposed comment 38(g)(2)-2 would have clarified that the amount of prepaid interest can be disclosed as a negative number if the calculation of prepaid interest results in a negative number. Proposed comment 38(g)(2)-3 would have clarified that if interest is not collected for a portion of a month or other period between closing and the date from which interest will be collected with the first monthly payment, then $0.00 must be disclosed under proposed § 1026.38(g)(2) for prepaid interest. This guidance would have been consistent with instructions for RESPA settlement statement line 901 in appendix A to Regulation X.

Several commenters submitted comments similar to comments received in response to proposed § 1026.37(g)(2), stating that this subcategory under proposed § 1026.38(g)(2) should be labeled with a different description, and that any prepaid interest should be calculated in reference to the introductory interest rate instead of the fully-indexed rate. Accordingly, for the reasons discussed above in the section-by-section analysis of § 1026.37(g)(2), the Bureau is adopting § 1026.38(g)(2) and its accompanying commentary as proposed with a modification to require the name of the person ultimately receiving the payment, except for the disclosure of prepaid interest. The Bureau also is adopting comment 38(g)(2)-4 to clarify that the interest rate used to determine the amount of prepaid interest is the interest rate disclosed on page one of the Closing Disclosure under § 1026.38(b), as required by § 1026.37(b)(2). One industry commenter stated that the proposed rule did not provide a definition for items that would be considered property taxes. The Bureau is adopting comment 38(g)(2)-5 to clarify that property taxes that are disclosed pursuant to § 1026.38(g)(2) are those items that meet the definition stated in comment 43(b)(8)-2.

38(g)(3) Initial Escrow Payment at Closing

The third subcategory would have been disclosed under the subheading "Initial Escrow Payment at Closing." The items that would have been identified under § 1026.37(g)(3) would have been stated with their actual cost and the applicable aggregate adjustment required under 12 CFR 1024.17(d)(2) and disclosed under proposed § 1026.38(g)(3). Proposed comment 38(g)(3)-1 would have clarified that the creditor would be required to state the amount that it would require the consumer to place into a reserve or escrow account at consummation to be applied to recurring charges for property taxes, homeowner's and similar insurance, mortgage insurance, homeowner's association dues, condominium dues, and other periodic charges. Each charge identified would have been disclosed with a relevant label, monthly payment amount, and number of months collected at consummation. Proposed comment 38(g)(3)-2 would have clarified that the method used to determine the aggregate adjustment for purposes of establishing the reserve or escrow account is described in Regulation X § 1024.17(d)(2), that examples of the calculation methodology can be found in appendix E to Regulation X, and that the result of the calculation will always be a negative number or zero, except for amounts due to rounding. This comment would have incorporated guidance provided in appendix A to Regulation X relating to the instructions to complete the current RESPA settlement statement section 1000.

Comments received regarding proposed § 1026.38(g)(3) sought clarity regarding the difference between items that are considered to be prepaid versus those items that are considered to be included in an escrow account, since both categories are payable prior to the first payment date. Commenters also sought clarity on the itemization of multiple taxes, as discussed in

§ 1026.37(g)(3) above. The Bureau observes that escrow payments would be paid to a creditor (or a mortgage servicer if one has been identified at closing) while prepaid amounts generally are paid to third parties, and thus the Bureau does not believe this difference is confusing or difficult to comply with. Indeed, § 1026.38(g)(2) requires disclosure of the person ultimately receiving the payment or the government entity assessing the property taxes, while § 1026.38(g)(3) does not impose such a requirement.

One document preparation/software industry commenter stated that the aggregate adjustment disclosed under proposed § 1026.38(g)(3) should be the last item disclosed under this subheading. The Bureau believes that it would improve consumer understanding to have the aggregate adjustment required by § 1024.17(d)(2) listed as the last item disclosed under this subheading, and is adding a sentence to comment 37(g)(3)-2 to address this issue. One industry commenter stated that the proposed rule did not provide a definition for items that would be considered property taxes.

Accordingly, the Bureau is adopting § 1026.38(g)(3) and its accompanying commentary as proposed. The Bureau also is adding an additional sentence to comment 38(g)(3)-2 to clarify that the aggregate adjustment required under § 1024.17(d)(2) should be listed as the last item disclosed under this subheading. The Bureaus also is adopting comment 38(g)(3)-3 to incorporate guidance from 37(g)(3)-5 for multiple taxes with different accounting periods. The Bureau is adopting comment 38(g)(3)-4 to clarify that property taxes that could be disclosed pursuant to § 1026.38(g)(3) are those items that meet the definition stated in comment 43(b)(8)-2. The Bureau is adopting comment 38(g)(3)-5 to clarify that the amounts disclosed pursuant to § 1026.38(g)(3) are those amounts that are included in the definition of “escrow account” under 12 CFR 1024.17(b).

38(g)(4) Other

The fourth subcategory would have been disclosed under the label “Other.” The services required or obtained in the real estate closing by the consumer, seller, or other party would have been described and the costs for the services would have been disclosed under proposed § 1026.38(g)(4). The label for any cost that is a component of title insurance would have been required to include the description “Title –.” The label for costs of premiums for separate insurance, warranty, guarantee, or event-coverage products would have been required to include the parenthetical “(optional)” at the end. Proposed comment 38(g)(4)-1 would have clarified that the charges disclosed under proposed § 1026.38(g)(4) include all real estate brokerage fees, homeowner’s or condominium association charges paid at closing, home warranties, inspection fees, and other fees that are part of the real estate transaction but not required by the creditor or disclosed elsewhere in proposed § 1026.38. Proposed comment 38(g)(4)-2 would have clarified that any owner’s title insurance premium disclosed under proposed § 1026.38(g)(4) in a jurisdiction that permits simultaneous issuance title insurance rates would have been calculated by using the full owner’s title insurance premium, adding any simultaneous issuance premium for issuance of lender’s coverage, and then deducting the full premium for lender’s coverage disclosed under proposed § 1026.38(f)(2) or (f)(3) and that the cost of a premium for an owner’s title insurance policy would have been always labeled with “Title – ” at the beginning, and labeled “(optional)” at the end when designated borrower-paid at or before closing. Proposed comment 38(g)(4)-3 would have referred to comment 37(g)(4)-3 for additional guidance on the use of the parenthetical “(optional)” at the end of label on a cost under proposed § 1026.38(g)(4)(ii).

Commenters that provided comments related to the calculation of the owner’s title insurance premium presented arguments identical to those provided in relation to proposed § 1026.37(g)(4), which are discussed in the section-by-section analysis of that provision, above. Two GSE commenters indicated that there was no guidance in the proposal on how to disclose real estate commissions charged by real estate brokerages in a transaction. The Bureau is addressing this query with the addition of commentary to clarify this issue. Accordingly, the Bureau is adopting § 1026.38(g)(4) and its accompanying commentary as proposed. In response to the comments regarding the real estate brokerage commissions, the Bureau also is adopting comment 38(g)(4)-4 to clarify that the total amount of the real estate commission charged by any real estate brokerage must be disclosed under § 1026.38(g)(4), regardless of the identity of the party that may hold any earnest money deposit.

38(g)(5) Total Other Costs

38(g)(6) Subtotal of Costs

With the label "Total Other Costs (Borrower-Paid)," the total of the consumer paid charges at closing and the consumer paid charges before closing would have been disclosed under proposed § 1026.38(g)(5). The costs disclosed under proposed § 1026.38(g)(1) through (4) would have been subtotaled and disclosed in the appropriate column designated borrower-paid at or before closing under proposed § 1026.38(g)(6). Proposed comment 38(g)(6)-1 would have clarified that the only costs subtotaled under proposed § 1026.38(g)(6) are those that would have been designated borrower-paid at or before closing. The costs disclosed under § 1026.38(g)(1) through (4) that are seller-paid at closing, seller-paid before closing, or paid by others would not have been disclosed under proposed § 1026.38(g)(6), but would have been subtotaled under proposed § 1026.38(h)(2). The Bureau did not receive comments concerning proposed § 1026.38(g)(5) or (6). Accordingly, the Bureau is adopting § 1026.38(g)(5) and (6) and its accompanying commentary as proposed, with a minor modification to the label required under § 1026.38(g)(6) to conform to form H-25.

38(h) Closing Cost Totals

38(h)(1) and (2)

Subtotals of closing costs and total closing costs paid by the consumer would have been required to be disclosed under proposed § 1026.38(h). With the label "Total Closing Costs (Borrower-Paid)," the total amount of consumer paid closing costs would have been disclosed under proposed § 1026.38(h)(1). With a description of "Closing Costs Subtotal (Loan Costs + Other Costs)," the subtotal of all charges disclosed under proposed § 1026.38(f) and (g) in each column described in proposed § 1026.38(f) would have been disclosed under proposed § 1026.38(h)(2). Comment 38(h)(2)-1 would have clarified that the loan costs and other costs that are seller-paid at closing, seller-paid before closing, and paid by others are also subtotaled under proposed § 1026.38(h)(2). The Bureau did not receive comments concerning the totals and subtotals to be provided under § 1026.38(h)(1) and (2). Accordingly, the Bureau is adopting § 1026.38(h)(1) and (2) and its accompanying commentary as proposed, with a minor modification to the label required under § 1026.38(h)(2) to conform to form H-25.

The Bureau adopts § 1026.38(h)(1) and (2) pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a) because disclosure of this closing cost information promotes the informed use of credit and consumer understanding of the costs, benefits, and risks associated with the mortgage transaction. Furthermore, for the reasons stated above, the rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b). In addition, § 1026.38(h)(1) and (2) implements Dodd-Frank Act section 1419, which amended section 128(a) of TILA to add a new paragraph (17) requiring disclosure of, among other amounts, the amount of settlement charges the borrower must pay at closing and the aggregate amount of all settlement charges for all settlement services provided in connection with the loan.

38(h)(3)

Section 1026.38(h)(3) would have required the creditor to disclose the amount of credits provided by the creditor to the consumer at consummation. Proposed comment 38(h)(3)-1 would have provided a cross-reference to guidance provided in comments 17(c)(1)-19, 19(e)(3)(i)-4, and 19(e)(3)(i)-5 concerning the disclosure of lender credits, including those that are disclosed under § 1026.37(g)(6). Proposed comment 38(h)(3)-2 would have clarified that any amounts disclosed under § 1026.38(h)(3) also can be used for disclosing any credits from the creditor to remediate excess costs determined under § 1026.19(e)(3)(i) or (e)(3)(ii). This comment would have incorporated guidance provided in the HUD RESPA Roundup dated April 2010.

Industry commenters stated that lender credits should not be deducted from the total costs, but rather should offset origination charges, in a fashion similar to the existing RESPA GFE and RESPA settlement statement. Industry commenters stated that to show credits in another fashion would make loans offered by mortgage brokers appear more expensive. Consumer testing conducted by the Bureau indicated that applying lender credits to origination charges lead to negative loan costs, which may not be understood by consumers. *See* Kleimann Testing Report at 125. The Bureau moved lender credits to offset all closing costs to better ensure they would be understood by consumers. *See* Kleimann Testing Report at 259-60

However, an association of State financial regulators stated that it believed netting of lender credits against origination fees would be contrary to the nature of Regulation Z, and that netting of credits should be avoided wherever possible. Specifically, the association of State financial regulators stated that a clear enumeration of how a lender credit was applied should be provided in the Closing Disclosure. As noted in the proposed rule, the Bureau understands that lender credits are sometimes provided to offset specific charges, as well as provided in a lump sum without attribution to specific costs, pursuant to the legal obligation between the creditor and the consumer. The Bureau believes that the Closing Disclosure should, to the extent practicable, reflect the terms of the legal obligation. The Bureau has adopted comment 38(f)-1, which provides a method to designate those specific closing costs that are paid by the lender, which is intended to permit the itemization of lender credits in accordance with the legal obligation between the creditor and consumer. However general, undesignated lender credits also need to be appropriately reflected on the Closing Disclosure. Accordingly, the Bureau is adopting § 1026.38(h)(3) and its accompanying commentary substantially as proposed, with minor modifications for clarity. The Bureau is modifying § 1026.38(h)(3) to require statements regarding the inclusion of a credit under § 1026.19(f)(2)(v) to cure a tolerance violation of § 1026.19(e)(3), and making minor modifications for clarity. The statement regarding the inclusion of a credit under § 1026.19(f)(2)(v) is illustrated by form H-25(F) of appendix H.

38(h)(4)

Section 1026.38(h)(4) would have required the creditor to use terminology describing the charges on the Closing Disclosure in a manner that is consistent with the descriptions used for charges disclosed on the Loan Estimate under § 1026.37. The creditor also would have been required to list the charges on the Closing Disclosure in the same sequential order on the Loan Estimate under § 1026.37. Proposed comment 38(h)(4)-1 would have clarified that the creditor would have been required to use the same terminology and order to make it easier for the consumer to compare charges listed on the Loan Estimate and Closing Disclosure. Also, if charges move between subheadings under § 1026.38(f)(2) and (3), listing the charges in alphabetical order in each subheading category would have been considered to be in compliance with § 1026.38(h)(4).

Commenters stated that showing items in alphabetical order would be difficult for their information technology systems, which was discussed in the section-by-section analysis of § 1026.37(f)(6), above. Proposed § 1026.38(h)(4) requires that the items on the Closing Disclosure be kept in the same order as the items were disclosed on the Loan Estimate, with items added on the Closing Disclosure to be re-alphabetized. Consumer testing conducted by the Bureau showed that maintaining, to the extent possible, the order of charges in the order disclosed on the Loan Estimate on the Closing Disclosure assisted consumers to better identify changes between the estimated and actual amounts. *See* Kleimann Testing Report at 292. At the Bureau's Quantitative Study, consumer participants using the Loan Estimate and Closing Disclosure performed statistically significantly better than the consumer participants using the current RESPA GFE, early TILA disclosure, RESPA settlement, and final TILA disclosure at comparing their estimated and final terms and costs. *See* Kleimann Quantitative Study Report at 68-9. Based on these findings, the Bureau believes that there is substantial consumer benefit to the proposed ordering of the charges. Accordingly, the Bureau is adopting § 1026.38(h)(4) and its accompanying commentary as proposed, with modifications for clarity.

38(i) Calculating Cash to Close

As discussed above, the total amount of cash or other funds that the consumer must provide at consummation is commonly known as the "cash to close." Prior to the enactment of the Dodd-Frank Act, neither TILA nor Regulation Z expressly required disclosure of the cash to close amount or its critical components. The Dodd-Frank Act added section 128(a)(17) to TILA, which requires the disclosure of "the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing . . . and the aggregate amount of other fees or required payments in connection with the loan." 15 U.S.C. 1638(a)(17).

The "Summary of Borrower's Transaction" on page 1 of the RESPA settlement statement, line 303, includes a box that shows the amount of cash due to or from the consumer. *See* appendix A to Regulation X. Page 3 of the RESPA settlement statement also includes a chart entitled "Comparison of Good Faith Estimate (GFE) and HUD-1 Charges," which highlights any changes between the estimated and actual amounts for settlement service charges that are subject to the limitations on increases under 12 CFR 1024.7(e). However, these settlement service charges comprise only a portion of the total amount of funds that the consumer would need to consummate the transaction. Thus, the cash to close box on line 303 and the comparison chart on page 3 of the RESPA settlement statement together provide an incomplete picture of how the cash to close amount is calculated and whether it is different than the consumer expects based on the RESPA GFE.

The "Calculating Cash to Close" table in the Closing Disclosure under proposed § 1026.38(i) would have mirrored the format of, and updated the amounts shown on, the "Calculating Cash to Close" table in the Loan Estimate under proposed § 1026.37(h). The Bureau believed that including separate "Calculating Cash to Close" tables on both the Loan Estimate and the Closing Disclosure would have aided the consumer in ascertaining whether the cash to close amount and its critical components changed between the Loan Estimate and the Closing Disclosure, and by how much. The two tables would have been similar in format and designed to be used in tandem when the consumer is reviewing the Closing Disclosure and comparing its content to that shown on the Loan Estimate. However, the table on the Closing Disclosure would have included additional information under the subheading “Did this change?” which was intended to assist the consumer in identifying and understanding the reasons for any such changes.

The Bureau’s consumer testing indicated that consumers were able to use the detailed comparison table to understand how and why the actual cash to close amount on the Closing Disclosure differs from the estimated amounts shown on the Loan Estimate. During testing conducted prior to the proposal, consumers tended to use the “Calculating Cash to Close” table in conjunction with the “Closing Cost Details” tables showing itemized charges and subtotals on the Closing Disclosure, to identify the differences between the estimated and actual cash to close amount and its critical components and to gain a better understanding of the numbers underlying the cash to close amount. The consumers also benefited from the “Did this change?” subheading containing statements that components of the cash to close changed and simple explanations as to why. The Bureau incorporated this feedback into the design of the table and its choice of language to be used under the “Did this change?” subheading, as applicable.

The proposal stated that requiring disclosure of the “Calculating Cash to Close” table also would have complemented § 1026.19(f)(1)(ii), which requires delivery of the Closing Disclosure three business days prior to consummation. TILA section 128(b)(2)(D) requires that a corrected TILA disclosure be given to the consumer not later than three business days prior to consummation if the APR as initially disclosed becomes inaccurate and the Bureau understands that the annual percentage rate changes triggering the redisclosure obligation occur so frequently that many creditors currently provide the corrected TILA disclosure as a matter of course even if redisclosure is not required. RESPA section 4 provides that the RESPA settlement statement be provided “at or before settlement,” however, and the Bureau understands that it typically is given the day of settlement. As discussed above, proposed § 1026.19(f)(1)(ii) would have merged the two provisions by requiring that consumers be given the integrated disclosures three business days prior to consummation. The Bureau stated that, during this three-business-day period, the consumer can review the Closing Disclosure, contact the creditor with questions regarding the information contained on the Closing Disclosure, and correct any errors prior to consummation. The proposal stated that disclosing the cash to close amount and how it was calculated three business days in advance of consummation generally provides the consumer with a three-business-day window to make arrangements to have the necessary funds available for the consummation. The proposal stated that this would help alleviate concerns that, in some cases, consumers may not know until shortly before consummation—or even the day of consummation—how much of their own funds they will be expected to bring to the closing table.

The “Calculating Cash to Close” table that would have been disclosed on the Closing Disclosure under § 1026.38(i) would have consisted of four columns and nine rows. The first column, which does not have a subheading, would have included labels for the components of cash to close. Total closing costs, which would have been listed in the first row, would have been the sum total of creditor, third-party settlement service, and other transaction-related charges disclosed on the “Closing Cost Details” tables on the Closing Disclosure. Subsequent rows would have listed other components of the cash to close amount, such as the closing costs paid before consummation, closing costs financed, and the deposit. These component amounts are discussed in more detail under § 1026.38(i)(1) through (8), below. The second column, under the subheading “Estimate,” would have included the estimated amounts of cash to close and its components. These amounts would have matched the estimates given on the “Calculating

Cash to Close" table in the Loan Estimate, which would have been shown to the nearest whole dollar amount. The third column, under the subheading "Final," would have included the actual amounts of the cash to close and its components without rounding. In both the second and the third columns, the amounts that increase the total cash to close amount would have been shown as positive numbers, and the amounts that reduce the total cash to close amount would have been shown as negative numbers. The fourth column, under the subheading "Did this change?" would have contained in each row: (1) a statement, more prominent than other disclosures under proposed § 1026.38(i), as to whether the actual amount is different from or increased above the estimated amount; and (2) if the actual amount is different from or increased over the estimated amount, a simple explanation for the difference or increase along with cross-references to other relevant information disclosed on the Closing Disclosure, as applicable.

Proposed comment 38(i)-1 would have discussed how, under each subparagraph (iii) of § 1026.38(i)(1) through (i)(8), the statement as to whether the "Final" amount disclosed under each subparagraph (ii) of § 1026.38(i)(1) through (i)(8) is greater than, equal to, or less than the corresponding "Estimate" amount disclosed under each subparagraph (i) of § 1026.38(i)(1) through (i)(8) would have been disclosed more prominently than the other disclosures under § 1026.38(i). The proposed comment would have clarified that this more prominent statement can take the form, for example, of a "Yes" or "No" disclosed in capital letters and in boldface, as shown on the Closing Disclosure form H-25 set forth in appendix H to Regulation Z, the standard form or model form, as applicable, pursuant to § 1026.38(t). The comment also would have discussed how, in the event a difference or an increase in costs has occurred, certain words within the narrative text that are included under the subheading "Did this change?" are displayed more prominently than other disclosures, and gives an example of such a prominent statement.

Proposed comment 38(i)-2 would have described how a final amount shown to two decimal places on the "Calculating Cash to Close" table disclosed under proposed § 1026.38(i) could appear to be a larger number than its corresponding estimate shown to the nearest dollar when, in fact, the apparent increase is due solely to rounding. The comment further would have clarified that any statement disclosed under the subheading "Did this change?" as to whether an actual amount is higher than its corresponding estimated amount is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. The proposed comment also would have provided an example of how a contrary rule could result in inaccurate disclosures of increases. The proposed comment would have reflected the Bureau's intention that the statements of increases to be disclosed under each subparagraph (iii) under § 1026.38(i)(1) through (i)(8) capture true increases rather than increases due solely to rounding rules.

Proposed comments 38(i)-3 and -4 would have provided guidance regarding the statements required by each of § 1026.38(i)(4)(iii)(A), (i)(5)(iii)(A), (i)(6)(iii)(A), (i)(7)(iii)(A), and (i)(8)(iii)(A) that the consumer should see the details disclosed pursuant to another subsection or other subsections within proposed § 1026.38, or that an amount has increased or decreased from an estimated amount, as applicable. The comments would have noted that, for example, § 1026.38(i)(7)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to § 1026.38(j)(2)(v), and, as shown on Closing Disclosure form H-25, that statement could read: "See Seller Credits in Section L." These comments also provide guidance regarding the required statements that are not illustrated as samples in form H-25 of appendix H.

Commenters stated several reasons for why the Calculating Cash to Close table proposed under § 1026.38(i) would not work in transactions without a seller, including the disclosure of negative numbers for cash received by the consumer, and the different nature of a transaction without a seller. The Bureau is addressing the differing nature of a transaction without a seller by providing an alternative Calculating Cash to Close table under § 1026.38, as discussed in the section-by-section analysis of § 1026.38(e) above. However, the Bureau believes that negative numbers, to a certain extent, are necessary to be used in order to offset charges from credits. One large non-bank lender commenter stated that it was unfair to require the creditor to know the amount of an earnest money deposit, payments to others, and the funds for the consumer in the calculating cash to close table. However, much, if not all, of the information that the commenter cited will be necessary to know and evaluate the loan-to-value ratio and other criteria in order to: (1) determine the consumer's ability to repay as required under § 1026.43(c); or (2) to evaluate the transaction for its eligibility for government loan programs and sale on the secondary market. Since the creditor will be evaluating this information in connection with underwriting the loan, the inclusion of the information on the Closing Disclosure should not create a compliance burden.

One large bank commenter stated that there was no provision in the calculating cash to close table under proposed § 1026.38(i) to compare the charges disclosed on the Loan Estimate to the charges on the Closing Disclosure in a more itemized fashion, such as is currently disclosed on page 3 of the RESPA settlement statement. The Bureau's consumer testing of the integrated disclosures before it issued the proposal has shown that consumers were confused about the disclosure of the charges subject to a tolerance limit and the exact extent of tolerance, if any, which would apply to each charge. *See* Kleimann Testing Report at 125, 134.[301] The calculating cash to close table under proposed § 1026.38(i) would have indicated to consumers when the creditor exceeded a tolerance limit. The approach tested and included in proposed § 1026.38(i) provided clearer information to the consumer than the type of breakdown suggested by the large bank commenter.

Several national industry trade association commenters stated that, while the calculating cash to close table was required to show when there was a tolerance violation under § 1026.19(e)(3), there was no provision to show a tolerance cure. Tolerance cures at consummation could be effectuated by indicating that the charge, or a portion of a charge, was designated as paid by others under proposed § 1026.38(f), and thus the total amount paid by the consumer under § 1026.38(i)(1) would be within the tolerance limits of § 1026.19(e)(3). Thus, the difference discussed in § 1026.38(i)(1)(iii)(A)(*2*) would not exceed the legal limits and no statement would be required under § 1026.38(i)(1)(iii)(A)(*3*). The documentation of a tolerance cure after consummation would be accomplished under proposed § 1026.38(h)(3), as discussed in proposed comment 38(h)(3)-2. Therefore, the disclosure of tolerance cures was already addressed by other provisions of the proposal, all of which have been adopted by the Bureau. Several commenters requested additional guidance on the statements that could be made in the column designated "Did this change?" The Bureau has added additional guidance in the commentary and additional samples to appendix H to Regulation Z to provide additional guidance related to these disclosures.

[301]A table entitled "Limits on Increases" was tested in subsequent rounds, which also proved to be difficult for consumers to understand. Kleimann Testing Report at 168, 174. The information was instead incorporated into the calculating cash to close table. Kleimann Testing Report at 226. The calculating cash to close table subsequently assisted in consumer's understanding of why charges changed and if they exceeded tolerance limitations. Kleimann Testing Report at 248-49, 267.

One title insurance company commenter stated that the amounts disclosed in the "Estimate" column of the calculating cash to close table under § 1026.38(i) should not be rounded, and instead the total unrounded amount of the charges that were the basis for the rounded amount should be provided. This could be problematic, since the unrounded amounts would not have been disclosed to the consumer until the Closing Disclosure was provided. Thus, the consumer would not see the same amounts on the Loan Estimate and the "Estimate" column of the calculating cash to close table. Accordingly, the Bureau is adopting § 1026.38(i) and its accompanying commentary as proposed. Based on its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act sections 1032(a) and, for residential mortgage loans, 1405(b), the Bureau is requiring that the Closing Disclosure contain a Calculating Cash to Close table that highlights the cash to close amount and its critical components and compares those amounts to the corresponding disclosures shown on the Loan Estimate under § 1026.37(h). The Bureau believes that this disclosure will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and timelier information on the costs of the closing process. Providing consumers with information about the cash to close amount, its critical components, and how such amounts changed from the estimated amounts disclosed on the Loan Estimate helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The Bureau also believes such disclosure will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(i)(1) Total Closing Costs

Proposed § 1026.38(i)(1)(i) and (ii) would have required the disclosure of a comparison of the consumer's estimated and actual "Total Closing Costs" amounts. The estimated "Total Closing Costs" amount would have been the same amount that is disclosed on the Loan Estimate in the Calculating Cash to Close table under proposed § 1026.37(h)(1). This amount also would have matched the "Total Closing Costs" amount that is disclosed on the Loan Estimate under proposed § 1026.37(g)(6). The actual "Total Closing Costs" amount would have been the same amount disclosed on the Closing Disclosure under proposed § 1026.38(h)(1), reduced by the amount of any lender credits disclosed under proposed § 1026.38(h)(3). Proposed comment 38(i)(1)(i)-1 would have provided guidance regarding the requirement under proposed § 1026.38(i)(1)(i) that the amount disclosed is labeled "Total Closing Costs" and that such label is accompanied by a reference to the disclosure of "Total Closing Costs" under § 1026.38(h)(1).

Proposed § 1026.38(i)(1)(iii)(A) would have specified that if the actual amount of "Total Closing Costs" is different than the estimated amount of such costs as shown on the Loan Estimate (unless the difference is due to rounding), the creditor or closing agent must state, under the subheading "Did this change?," that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under proposed § 1026.38(f)(4) and (g)(5), and must include a reference to such disclosures, as applicable. This language was intended to direct the consumer to the more detailed itemization on the Closing Disclosure of the costs that comprise the "Total Closing Costs."

Under proposed § 1026.38(i)(1)(iii)(A), the creditor or closing agent also would have stated the dollar amount of any excess amount of closing costs above the limitations on increases in closing costs under proposed § 1026.19(e)(3), if applicable, along with language stating that the increase exceeds the legal limits by the dollar amount of the excess. The dollar amount that would have been disclosed would have been required to reflect the different methods of calculating such excess amounts under proposed § 1026.19(e)(3)(i) and (ii). Proposed comment 38(i)(1)(iii)(A)-1 would have contained examples of how to calculate such excess amounts and would have clarified that because certain closing costs, individually, are subject to the limitations on increases in closing costs under proposed § 1026.19(e)(3)(i) (*e.g.*, origination fees, transfer taxes, charges paid by the consumer to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under proposed § 1026.19(e)(3)(ii) (*e.g.*, recordation fees, fees paid to an unaffiliated third party if the creditor permitted the consumer to shop for the service provider), the creditor or closing agent calculates subtotals for each type of excess amount, and then adds such subtotals together to yield the dollar amount to be disclosed in the table. The proposed comment also would have clarified that the calculation of the excess amounts above the limitations on increases in closing costs takes into account the fact that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation, and that certain itemized charges listed on the Loan Estimate under the subheading "Services You Can Shop For" may be subject to different limitations depending on the circumstances. Proposed comments 38(i)(1)(iii)(A)-2.i through -2.iii would have complemented commentary to proposed § 1026.19(e)(3). Pursuant to proposed § 1026.19(f)(2)(v), the creditor or closing agent would have been required to refund to the consumer any such excess amounts at consummation or within 30 days thereafter. Accordingly, the Bureau stated its belief that this proposed disclosure may help the consumer identify when a refund may be required and this information can be used by the consumer to request that the creditor or closing agent provide such refund at consummation or within 30 days thereafter.

The Bureau did not receive additional comments concerning § 1026.38(i)(1). Accordingly, the Bureau is adopting § 1026.38(i)(1) substantially as proposed, with modifications for clarity, a modification of the subheading of "Estimate" to "Loan Estimate" for consistency with form H-25 of appendix H to Regulation Z, and a modification removing the requirement to provide a reference to "Total Closing Costs" as duplicative of the requirements of § 1026.38(t)(3). The Bureau is modifying the design of these subheadings in the Closing Disclosure as discussed in more detail in section-by-section analysis of appendix H below. The revised design uses the subheading "Loan Estimate" instead of "Estimate" to increase understanding by consumers that the amounts disclosed in this column are those that were disclosed on the Loan Estimate. In the Bureau's pre-proposal and post-proposal qualitative consumer testing, consumers were able to use the Calculating Cash to Close table to understand their transactions and compare the estimated and final amounts. *See* Kleimann Testing Report at 248-9, 267-8; Kleimann Post-Proposal Testing Report at 68-71. The Bureau also is modifying § 1026.38(i)(1)(iii)(A)(3) to require specific statements in the case that a credit is provided to the consumer under § 1026.19(f)(2)(v) to cure a tolerance violation under § 1026.19(e)(3). These statements are illustrated by form H-25(F) of appendix H on the alternative Calculating Cash to Close table under § 1026.38(e), but are equivalent to those required under § 1026.38(i)(1)(iii)(A)(3). The Bureau is adopting comment 38(i)(1)(iii)(A)-3 to provide guidance regarding these statements.

38(i)(2) Closing Costs Subtotal Paid Before Closing

Proposed § 1026.38(i)(2) would have required the disclosure of a comparison of the estimated and actual amounts of the "Total Closing Costs" that are paid before consummation of the transaction. The estimated “Closing Costs Subtotal Paid Before Closing” would have been required to be disclosed as $0. Proposed comment 38(i)(2)(i)-1 would have clarified that this requirement is because the Loan Estimate does not have an equivalent disclosure under proposed § 1026.37(h). The actual “Closing Costs Subtotal Paid Before Closing” would have been the sum of the amount disclosed on the Closing Disclosure under proposed § 1026.38(h)(2) and designated “Borrower-Paid Before Closing.” Proposed § 1026.38(i)(2)(iii) would have specified that if the actual amount of “Closing Costs Subtotal Paid Before Closing” is different than the estimated amount, in this case $0 (unless the difference is due to rounding), the creditor or closing agent must state under the subheading “Did this change?” that the consumer paid such costs before consummation. This language was intended to remind the consumer that he or she paid certain transaction closing costs prior to consummation and that such costs will be subtracted from the actual cash to close amount. Proposed comment 38(i)(2)(iii)(B)-1 would have provided guidance regarding the requirement to disclose whether the estimated and final amounts are equal.

The Bureau did not receive comments concerning § 1026.38(i)(2). Accordingly, the Bureau is adopting § 1026.38(i)(2) and its accompanying commentary as proposed, with modifications for clarity, and a modification of the subheading of “Estimate” to “Loan Estimate” for consistency with form H-25 of appendix H to Regulation Z.

38(i)(3) Closing Costs Financed

Proposed § 1026.38(i)(3) would have required the disclosure of a comparison of the estimated and actual amounts of the “Total Closing Costs” that are financed. The estimated “Closing Costs Financed” amount would have been the same amount that is disclosed in the “Calculating Cash to Close” table in the Loan Estimate under proposed § 1026.37(h)(2). The actual “Closing Costs Financed” amount would have reflected any changes to the amount previously disclosed on the Loan Estimate. Proposed § 1026.38(i)(3)(iii) would have specified that if the actual amount of “Closing Costs Financed” is different than the estimated amount (unless the excess is due to rounding), the creditor or closing agent must state under the subheading “Did this change?” that the consumer included these closing costs in the loan amount, which increased the loan amount. The Bureau believed this explanatory language would have been particularly helpful to consumers for two reasons. First, an increase in closing costs financed may trigger a sizeable decrease in the cash to close, which in turn could create a false impression that the overall transaction costs to the consumer decreased. Second, during consumer testing, when consumers were presented with a scenario involving a loan amount that increased after delivery of the Loan Estimate, some of the consumers had difficultly isolating the increase in closing costs financed as the reason for the increased loan amount. *See* Kleimann Testing Report at 250. The Bureau believed this disclosure may assist consumers in understanding that the financed portion of the closing costs are paid for through the loan proceeds.

The Bureau did not receive comments concerning § 1026.38(i)(3). Accordingly, the Bureau is adopting § 1026.38(i)(3) and its accompanying commentary as proposed, with modifications for clarity, a modification of the subheading of “Estimate” to “Loan Estimate,” and to change the label of “Closing Costs Financed” to “Closing Costs Financed (Paid from your Loan Amount),” for consistency with form H-25 of appendix H to Regulation Z. In addition to the design modification described above under the section-by-section analysis of § 1026.38(i)(1), the Bureau is modifying the design of the Closing Disclosure to change the parenthetical in the label of Closing Costs Financed from “Included in Loan Amount” to “Paid from your Loan

Amount” to provide additional clarity regarding the use of loan proceeds when financing closing costs (as discussed in more detail in section-by-section analysis of appendix H below). In the Bureau’s post-proposal qualitative consumer testing, consumers were able to use the Calculating Cash to Close table to understand their transactions and compare the estimated and final amounts. *See* Kleimann Post-Proposal Testing Report at 68-71.

38(i)(4) Down Payment/Funds from Borrower

Proposed § 1026.38(i)(4) would have required the disclosure of a comparison of the estimated and actual amounts of the “Down Payment/Funds from Borrower.” Down payment and funds from borrower are related concepts, but down payment is applicable to a transaction that is a purchase as defined in proposed § 1026.37(a)(9)(i), while funds from borrower relates to a transaction other than a purchase. Under proposed § 1026.38(i)(4)(i), the estimated “Down Payment/Funds from Borrower” amount would have been the same amount that is disclosed on the “Calculating Cash to Close” table in the Loan Estimate under proposed § 1026.37(h)(3). Under proposed § 1026.38(i)(4)(ii)(A), in a transaction that is a purchase as defined in proposed § 1026.37(a)(9)(i), the actual amount of the “Down Payment/Funds from Borrower” would have been the actual amount of the difference between the purchase price of the property and the principal amount of the credit extended, stated as a positive number. Under proposed § 1026.38(i)(4)(ii)(B), in a transaction other than a purchase as defined in proposed § 1026.37(a)(9)(i), the actual amount of “Down Payment/Funds from Borrower” would have been determined in accordance with § 1026.38(i)(6)(iv), by subtracting from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)) the principal amount of the credit extended. If such calculation would have yielded a positive number, then the positive number is disclosed under proposed § 1026.38(i)(4)(ii)(B); otherwise, $0.00 is disclosed.

Proposed comment 38(i)(4)(ii)(A)-1 would have provided an example of the down payment changing in a particular transaction. Proposed comment 38(i)(4)(ii)(B)-1 would have provided further clarification about how the actual "Down Payment/Funds from Borrower" amount is determined under proposed § 1026.38(i)(6)(iv), and gives an example of when that actual amount may change from the corresponding estimated amount.

Proposed § 1026.38(i)(4)(iii)(A) would have specified that if the actual amount of "Down Payment/Funds from Borrower" is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state under the subheading "Did this change?" that the consumer increased or decreased the payment, as applicable, and also state that the consumer should see the details disclosed under § 1026.38(j)(1) or (j)(2), as applicable. This language was intended to remind the consumer that he or she will be contributing a different amount of his or her own funds toward the cash to close, and therefore must make arrangements prior to the date of consummation to procure any necessary funds. Comment 38(i)(4)(iii)(A)-1 would have clarified the requirement under § 1026.38(i)(4)(iii)(A) that a statement be given that the consumer has increased or decreased this payment, as applicable, along with a statement that the consumer should see the details disclosed under § 1026.38(j)(1) or (j)(2), as applicable. The comment would have noted that, in the event the purchase price of the property increased, that statement can read, for example: "You increased this payment. See details in Section K." In the event the loan amount decreased, that statement can read, for example, "You increased this payment. See details in Section L." This language was intended to direct the consumer to the section within the Closing Disclosure containing the information that accounts for the increase in the “Down Payment/Funds from Borrower” amount.

The Bureau did not receive comments concerning § 1026.38(i)(4). Accordingly, the Bureau is adopting § 1026.38(i)(4) and its accompanying commentary as proposed, with a modification for clarity, and a modification of the subheading of “Estimate” to “Loan Estimate” for consistency with form H-25 of appendix H to Regulation Z.

38(i)(5) Deposit

Proposed § 1026.38(i)(5) would have required the disclosure of a comparison of the estimated and actual amounts of the “Deposit.” The estimated “Deposit” amount would have been the same amount that is disclosed in the “Calculating Cash to Close” table on the Loan Estimate under proposed § 1026.37(h)(4). The actual “Deposit” amount would have been the same amount that is disclosed on the Closing Disclosure under proposed § 1026.38(j)(2)(ii). Proposed § 1026.38(i)(5)(iii) would have specified that if the actual amount of “Deposit” is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state, under the subheading “Did this change?,” that the consumer increased or decreased this payment, as applicable, and should see the details disclosed under § 1026.38(j)(2)(ii). This language was intended to direct the consumer to the section within the Closing Disclosure containing the itemization of the deposit in the Closing Disclosure.

The Bureau did not receive comments concerning § 1026.38(i). Accordingly, the Bureau is adopting § 1026.38(i)(5) as proposed, with modifications for clarity, and a modification of the subheading of “Estimate” to “Loan Estimate” for consistency with form H-25 of appendix H to Regulation Z. In addition, the Bureau is adopting new comment 38(i)(5)-1 to provide additional clarity regarding the disclosure required under § 1026.38(i)(5) in transactions in which there is no deposit.

38(i)(6) Funds for Borrower

Proposed § 1026.38(i)(6) would have required the disclosure of a comparison of the estimated and actual amounts of the "Funds for Borrower." Like proposed § 1026.37(h)(5), this amount was intended to represent generally the amount to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction, such as in cash-out refinance transactions. The determination of whether the transaction will result in "Funds for Borrower" would have been made under proposed § 1026.38(i)(6)(iv). The estimated "Funds for Borrower" amount disclosed under proposed § 1026.38(i)(6)(i) would have been the same amount that is disclosed in the "Calculating Cash to Close" table in the Loan Estimate under proposed § 1026.37(h)(5). Proposed § 1026.38(i)(6)(ii) would have provided that the actual "Funds for Borrower" amount disclosed is determined pursuant to proposed § 1026.38(i)(6)(iv), by subtracting from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)) the principal amount of the credit extended (excluding any amount disclosed under § 1026.38(i)(3)(ii)). The exclusion of any amount disclosed under § 1026.38(i)(3)(ii) would have been necessary since that amount of the credit extended has already been accounted for in the cash to close calculation by inclusion in proposed § 1026.38(i)(3)(ii). If such calculation yielded a negative number, then the negative number is disclosed under proposed § 1026.38(i)(6)(ii); otherwise, $0 is disclosed.

Proposed comment 38(i)(6)(ii)-1 would have provided further clarification about how the actual "Funds for Borrower" amount is determined under § 1026.38(i)(6)(iv), and to whom such amount is disbursed. Proposed § 1026.38(i)(6)(iii) would have provided that, if the actual amount of "Funds for Borrower" is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state in the subheading “Did this change?” that the consumer’s available funds from the loan amount have increased or decreased, as applicable. This language was intended to remind the consumer that a different amount of loan proceeds will be available following payoff of existing loans.

The Bureau did not receive comments concerning § 1026.38(i)(6). Accordingly, the Bureau is adopting § 1026.38(i)(6) and its accompanying commentary as proposed, with a minor modification to indicate that zero amounts are disclosed as “$0,” without decimal places denoting cents, modifications for clarity, and a modification of the subheading of “Estimate” to “Loan Estimate” for consistency with form H-25 of appendix H to Regulation Z.

38(i)(7) Seller Credits

Proposed § 1026.38(i)(7) would have required the disclosure of a comparison of the estimated and actual amounts of the “Seller Credits.” “Seller Credits” would have been described in proposed § 1026.38(j)(2)(v) and corresponding commentary. The estimated “Seller Credits” amount would have been the same amount that is disclosed on the “Calculating Cash to Close” table in the Loan Estimate under proposed § 1026.37(h)(6). The actual “Seller Credits” amount would have been the same amount disclosed on the Closing Disclosure under proposed § 1026.38(j)(2)(v). Proposed comment 38(i)(7)(ii)-1 would have clarified that the “Final” amount reflects any change, following the delivery of the Loan Estimate, in the amount of funds given by the seller to the consumer for generalized credits for closing costs or for allowances for items purchased separately, as distinguished from payments by the seller for items attributable to periods of time prior to consummation (which are considered “Adjustments and Other Credits” separately disclosed under proposed § 1026.38(i)(8)).

Proposed § 1026.38(i)(7)(iii) would have specified that, if the actual amount of “Seller

Credits" is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state that fact under the subheading "Did this change?," and state that the consumer should see the details disclosed under § 1026.38(j)(2)(v). This language was intended to direct the consumer to the section within the Closing Disclosure containing the itemization of seller credits.

The Bureau did not receive comments concerning § 1026.38(i)(7). Accordingly, the Bureau is adopting § 1026.38(i)(7) and its accompanying commentary as proposed, with modifications for clarity, and a modification of the subheading of "Estimate" to "Loan Estimate" for consistency with form H-25 of appendix H to Regulation Z.

38(i)(8) Adjustments and Other Credits

Proposed § 1026.38(i)(8) would have required the disclosure of a comparison of the estimated and actual amounts of the "Adjustments and Other Credits." "Adjustments and Other Credits" would have been described in proposed § 1026.38(j)(2)(vi) through (xi) and corresponding commentary. The estimated "Adjustments and Other Credits" amount is the same amount that would have been disclosed on the "Calculating Cash to Close" table in the Loan Estimate under proposed § 1026.37(h)(7). The actual "Adjustments and Other Credits" amount would have been equal to the total amount of the adjustments and other credits due from the consumer at consummation (*i.e.*, the amounts disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) through (x)), reduced by the total amount of the adjustments and other credits already paid by or on behalf of the consumer at consummation (*i.e.*, the amounts disclosed on the Closing Disclosure under § 1026.38(j)(2)(vi) through (xi)). Proposed § 1026.38(i)(8)(iii) would have specified that if the actual amount of "Adjustments and Other Credits" is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state that fact under the subheading “Did this change?,” and state that the consumer should see the details disclosed under § 1026.38(j)(1)(v) through (x) and (j)(2)(vi) through (xi). This language was intended to direct the consumer to the sections within the Closing Disclosure containing the itemization of the adjustments and other credits. Proposed comment 38(i)(8)(ii)-1 would have given examples of items that may be adjustments and other credits, and would have clarified that if the calculation required by § 1026.38(i)(8)(ii) yields a negative number, the creditor or closing agent discloses it as such.

One industry commenter stated that additional guidance was needed concerning the amount to be disclosed pursuant to § 1026.38(i)(8) for calculations without a seller, since the amounts under § 1026.38(j) may not be disclosed. An amount disclosed pursuant to § 1026.38(i)(8) in transactions without a seller would be $0 since there would be no amount disclosed under § 1026.38(j). However, a creditor can choose to use the alternative calculating cash to close table adopted in § 1026.38(e) as discussed in the section-by-section analysis of § 1026.38(e), above, in which case, the creditor would not disclose $0 under § 1026.38(i)(8). The Bureau is adopting § 1026.38(i)(8) and its accompanying commentary as proposed, with modifications for clarity, and a modification of the subheading of “Estimate” to “Loan Estimate” for consistency with form H-25 of appendix H to Regulation Z.

38(i)(9) Cash to Close

Proposed § 1026.38(i)(9) would have required the disclosure of a comparison of the estimated and actual amounts of the “Cash to Close.” The estimated “Cash to Close” amount would have been the same amount that is disclosed on the “Calculating Cash to Close” table in the Loan Estimate under proposed § 1026.37(h)(8) as “Estimated Cash to Close.” The actual “Cash to Close” amount would have been the sum of the amounts disclosed under proposed

§ 1026.38(i)(1) through (8). The label "Cash to Close" and the estimated and actual amounts listed in the table would have been disclosed more prominently than other disclosures in § 1026.38(i), as a means of emphasizing the importance of the cash to close amount. Proposed comment 38(i)(9)(ii)-1 would have clarified that the "Final" amount of "Cash to Close" disclosed under § 1026.38(i)(9)(ii) equals the amount disclosed on the Closing Disclosure as "Cash to Close" under § 1026.38(j)(3)(iii). The proposed comment also would have clarified that if the calculation required by § 1026.38(i)(9)(ii) yielded a negative number, the creditor or closing agent discloses it as such. Proposed comment 38(i)(9)(ii)-2 would have discussed how the disclosure of the "Final" amount of "Cash to Close" under § 1026.38(i)(9)(ii) is more prominent than the other disclosures under § 1026.38(i) and would have clarified that this more prominent disclosure can take the form, for example, of boldface, as shown on the Closing Disclosure form H-25(B).

The Bureau did not receive comments concerning § 1026.38(i)(9). Accordingly, the Bureau is adopting § 1026.38(i)(9) and its accompanying commentary substantially as proposed, with a modification of the subheading of "Estimate" to "Loan Estimate" for consistency with form H-25 of appendix H to Regulation Z and with a modification to § 1026.38(i)(9)(ii) to clarify that the sum disclosed is the sum of the amounts disclosed under the subheading "Final" in paragraphs (i)(1) through (i))(8) and not the sum of every amount disclosed in those paragraphs.

38(j) and (k) Summaries of Borrower's and Seller's Transactions

Proposed § 1026.38(j) and (k) would have required that the creditor or closing agent provide summaries of the consumer and seller portions of the transaction. Currently, RESPA section 4 requires the settlement agent to clearly and conspicuously itemize all charges imposed upon the borrower and seller in connection with the settlement. *See* 12 U.S.C. 2603. Regulation X implements these requirements by requiring the settlement agent to provide summaries of the consumer's and seller's transactions on the RESPA settlement statement. *See* Regulation X § 1024.8 and appendix A. Dodd-Frank Act section 1032(f) requires that the Bureau propose disclosures that combine the disclosures required under TILA and RESPA sections 4 and 5 into a single, integrated disclosure for mortgage loan transactions covered under TILA and RESPA.

Several commenters stated that the current RESPA settlement statement number system should be retained. However, the format required by proposed § 1026.38(t), as illustrated by proposed form H-25 of appendix H to Regulation Z, for the information required by proposed § 1026.38(j) and (k) contains a two-digit line numbering system, in contrast to the three-digit line numbering system for this information on the current RESPA settlement statement. At the Bureau's consumer testing, consumer participants appeared overwhelmed by the three- and four-digit line numbers on prototypes that contained line numbers similar to the current RESPA settlement statement. As described above in part III, the Bureau is also mindful of the risks of information overload to consumers. The Bureau believes that the increased amount of numbers on the page from the three- and four-digit line numbering system may detract significantly from the consumer's ability to engage with the Closing Disclosure. The prototypes that the Bureau tested that contained only a two-digit line numbering system performed better with consumers, and were more effective at enabling them to understand their actual closing costs and the differences between the estimated and actual amounts. In addition, as described above in the section-by-section analysis of § 1026.38(f) and (g), the use of this two-digit line numbering system for the information required by § 1026.38(f) and (g) allows the Loan Estimate and

Closing Disclosure to match more closely, which the Bureau's consumer testing indicates better enables consumers to understand their transaction. See the section-by-section analysis of § 1026.38(f) and (g) above for more detail regarding the two-digit line numbering system. During the Small Business Review Panel, several settlement agents and one mortgage company requested that the line numbers from the current RESPA settlement statement be retained, stating that using the revised line numbers in the prototype integrated Closing Disclosure would significantly increase programming costs. *See* Small Business Review Panel Report at 20, 28. Based on this feedback, the Bureau sought comment on whether the use of line numbers will lower software-related costs on industry, and the exact amount of the savings given the rest of the changes contemplated by this proposal, while also improving consumer understanding of the loan terms and costs at the consummation of the credit transaction and the closing of the real estate transaction.

Commenters did not provide the information sought by the Bureau, other than short, conclusory estimates of costs associated with implementation without discussion of the potential savings of the rest of the proposed rule. One title insurance company commenter stated that the separation of the Closing Disclosure into two disclosures, one for the consumer's transaction and one for the seller's transaction, should be mandatory under proposed § 1026.38(j), and not permissive as provided under proposed § 1026.38(t)(5)(vi) and (vii). In proposing § 1026.38(t)(5)(vi) and (vii), the Bureau sought to balance privacy concerns and more restrictive State law requirements with the mandated combination of the existing TILA and RESPA disclosures. This approach is consistent with current RESPA settlement statement requirements. 12 CFR 1024.9(a)(6). Even if the consumer and seller are provided with separate disclosures, creditors may still prepare, or require that a settlement agent prepare, a complete Closing

Disclosure to document compliance and to evaluate the transaction in accordance with governmental loan program and secondary market requirements to underwrite the mortgage.

Several commenters stated that it would be easier to provide two separate disclosure documents at consummation: (1) one representing the transaction between the creditor and the consumer; and (2) one representing the transaction between the consumer and seller. However, the Bureau has found through its consumer testing and in its analysis of the comments received, that the inclusion of the summaries of the consumer's and seller's transactions enable consumers to fully provide effective advance notice to home buyers of settlement costs. *See* Kleimann Testing Report at xvii; Kleimann Quantitative Study Report at 67-71. To separate the Closing Disclosure into two separate disclosures, one for the transaction between the creditor and consumer and another for the transaction between the consumer and seller would be impracticable, if not impossible, due to the intertwined nature of the two transactions. Without a real estate purchase contract, there would not be a transaction between the consumer and the creditor. And, without a mortgage loan, there would not be a transaction between the consumer and the seller. Often, costs associated with one transaction are accounted for or allocated between the parties and have a direct effect on the other transaction. For example, seller concessions from the real estate purchase contract can change the availability or terms of the loan transaction if the concessions are large enough to change the loan-to-value ratio and the amount of the consumer's down payment. In addition, at the Bureau's Quantitative Study, consumer participants using the Bureau's integrated disclosures performed statistically significantly better at understanding their final loan terms and costs than consumer participants using the current RESPA settlement statement and final TILA disclosure. *See* Kleimann Quantitative Study Report at 68-9. Accordingly, the Bureau is adopting § 1026.38(j) and (k) with applicable modifications as discussed further below.

In addition to effectuating Dodd-Frank Act section 1032(f), the Bureau believes that including on the Closing Disclosure summaries of the consumer's and seller's transactions will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice to home buyers and sellers of settlement costs, respectively. The summaries will assist consumers in understanding of the resolution of their legal obligations to sellers under the terms of the sales contract for the property which will be used to secure the credit extended to facilitate the purchase. The summaries also will assist sellers in understanding the charges they are required to pay under the sales contract. Moreover, consistent with section 1032(a) of the Dodd-Frank Act, the addition of the summaries of the consumer's and seller's transactions will ensure that the features of consumer credit transactions secured by real property 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. Therefore, the Bureau is exercising its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to require the creditor or closing agent to provide the summaries of the consumer's and seller's transactions that are currently provided in the RESPA settlement statement. The required information regarding the consumer's transaction is set forth in § 1026.38(j) and the required information regarding the seller's transaction is set forth in § 1026.38(k). Furthermore, for the reasons stated above, the rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

38(j) Summary of Borrower's Transaction

Proposed § 1026.38(j) would have required that the creditor or closing agent provide the summaries of the consumer's and seller's transactions in separate tables under the heading "Summaries of Transactions" with a statement that the purpose of the table is to summarize the transaction. Proposed § 1026.38(j) also would have listed the information that must be provided under the subheading "Borrower's Transaction." Proposed comment 38(j)-1 would have clarified that it is permissible to give two separate Closing Disclosures to the consumer and seller. This comment would have incorporated guidance provided in the HUD RESPA FAQs p. 44, #4 ("HUD-1 – General"). Comment 38(j)-2 would have clarified that additional lines can be added to the Closing Disclosure to show customary recitals and information used locally in real estate closings. This comment would have incorporated guidance provided in HUD RESPA FAQs p. 44, #5 and #10 ("HUD-1 – General"). Proposed comment 38(j)-3 would have clarified that the amounts disclosed under the following provisions of proposed § 1026.38(j) are the same as the amounts disclosed under the corresponding provisions of proposed § 1026.38(k): proposed § 1026.38(j)(1)(ii) and proposed § 1026.38(k)(1)(ii); proposed § 1026.38(j)(1)(iii) and proposed § 1026.38(k)(1)(iii); if the amount disclosed under proposed § 1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, proposed § 1026.38(j)(1)(v) and proposed § 1026.38(k)(1)(iv); proposed § 1026.38(j)(1)(vii) and proposed § 1026.38(k)(1)(vi); proposed § 1026.38(j)(1)(viii) and proposed § 1026.38(k)(1)(vii); proposed § 1026.38(j)(1)(ix) and proposed § 1026.38(k)(1)(viii); proposed § 1026.38(j)(1)(x) and proposed § 1026.38(k)(1)(ix); proposed § 1026.38(j)(2)(iv) and proposed § 1026.38(k)(2)(iv); proposed § 1026.38(j)(2)(v) and proposed § 1026.38(k)(2)(vii); proposed § 1026.38(j)(2)(viii) and proposed § 1026.38(k)(2)(x); proposed § 1026.38(j)(2)(ix) and proposed § 1026.38(k)(2)(xi); proposed § 1026.38(j)(2)(x) and proposed § 1026.38(k)(2)(xii); and proposed § 1026.38(j)(2)(xi) and proposed § 1026.38(k)(2)(xiii). The Bureau did not receive comments on § 1026.38(j), generally. Accordingly, the Bureau is adopting § 1026.38(j) and its accompanying commentary as proposed, with modifications for clarity and as specifically discussed below.

38(j)(1) Itemization of Amounts Due from Borrower

Proposed § 1026.38(j)(1)(i) would have required the creditor or closing agent to disclose the label "Due from Borrower at Closing" and the total amount due from the consumer at closing, calculated as the sum of items required to be disclosed under proposed § 1026.38(j)(1)(ii) through (x), excluding items paid from funds other than closing funds defined under proposed § 1026.38(j)(4)(i). Below this label proposed § 1026.38(j)(ii) would have required the creditor or closing agent to provide a reference to the sale price of the property and the amount of the contract sales price of the property being sold, excluding the price of any items of tangible personal property if the consumer and seller have agreed to a separate price for such items. In addition, below the same label, a reference to the subtotal of closing costs paid at closing by the consumer with adjustments for items paid by the seller in advance also would have been required to be provided by the creditor or closing agent. Proposed comment 38(j)(1)(ii)-1 would have clarified that, for purposes of this disclosure, personal property is defined by State law, but could include such items as carpets, drapes, and appliances. Manufactured homes would not have been considered personal property for purposes of proposed § 1026.38(j)(1)(ii). This comment would have incorporated guidance currently provided in the instructions for RESPA settlement statement line 102 in appendix A to Regulation X. Proposed § 1026.38(j)(1)(iii) would have required the creditor or closing agent to provide a reference to the sales price of any tangible personal property included in the sale that is not included in the sales price disclosed under proposed § 1026.38(j)(1)(ii).

Proposed § 1026.38(j)(1)(iv) would have required the creditor or closing agent to provide a reference to the subtotal of closing costs paid at closing by the consumer and to disclose the amount of closing costs paid by the consumer at closing. Proposed § 1026.38(j)(1)(v) would have required the creditor or closing agent to describe and disclose the amount of any additional items that the seller has already paid but are attributable to a time after closing and therefore will be used by the consumer. Also, proposed § 1026.38(j)(1)(v) would have required a description and the cost of any other items owed by the consumer not otherwise disclosed under proposed § 1026.38(f), (g), or (j). Proposed comment 38(j)(1)(v)-1 would have clarified that items described and disclosed under § 1026.38(j)(v) can include: any balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption case; any rent the consumer would collect after closing for a time period prior to closing; or the treatment of a security deposit. Proposed comment 38(j)(1)(v)-2 would have clarified costs owed by the consumer not otherwise disclosed under proposed § 1026.38(f), (g), or (j) will not have a parallel amount disclosed under proposed § 1026.38(k)(1)(iv).

Proposed § 1026.38(j)(1)(vi) would have required the creditor or closing agent to provide a reference to adjustments paid by the seller in advance. Proposed § 1026.38(j)(1)(vii) would have required the creditor or closing agent to provide a reference to city/town taxes, the time period that the consumer is responsible to reimburse the seller for any such prepaid taxes, and the prorated amount of any such prepaid taxes due from the consumer at closing. Proposed § 1026.38(j)(1)(viii) would have required the creditor or closing agent to provide a reference to county taxes, the time period that the consumer is responsible for reimbursing the seller for any such prepaid taxes, and the prorated amount of any such prepaid taxes due from the consumer at closing. Proposed § 1026.38(j)(1)(ix) would have required the creditor or closing agent to provide a reference to assessments, the time period that the consumer is responsible for reimbursing the seller for any such prepaid assessments, and the prorated amount of any such prepaid assessment due from the consumer at closing. Proposed § 1026.38(j)(1)(x) would have required the creditor or closing agent to provide a description and amount of any additional items paid by the seller prior to closing that are due from the consumer at closing. Proposed comment 38(j)(1)(x)-1 would have clarified that amounts disclosed under proposed § 1026.38(j)(1)(x) could be for additional taxes not disclosed under proposed § 1026.38(j)(1)(vii) and (viii), flood and hazard insurance premiums where the consumer is being substituted as an insured under the same policy, mortgage insurance in loan assumptions, planned unit development or condominium association assessments paid in advance, fuel or other supplies on hand purchased by the seller which the consumer will use when consumer takes possession of the property, and ground rent paid in advance. This comment would have incorporated instructions for RESPA settlement statement lines 106-112 in appendix A to Regulation X.

The Bureau did not receive comments concerning the required disclosures under proposed § 1026.38(j)(1). Accordingly, the Bureau is adopting § 1026.38(j)(1) and its accompanying commentary as proposed, with a minor modification to the label under § 1026.38(j)(1)(iv) to conform to form H-25.

38(j)(2) Itemization of Amounts Already Paid by or on Behalf of Borrower

Proposed § 1026.38(j)(2)(i) would have required the creditor or closing agent to disclose the label “Paid Already by or on Behalf of Borrower at Closing” and the total amount paid by or on behalf of the consumer prior to closing, calculated as the sum of items required to be disclosed under § 1026.38(j)(2)(ii) through (xi), excluding items paid from funds other than closing funds defined under § 1026.38(j)(4)(i). Below this label, § 1026.38(j)(2)(ii) would have required the creditor or closing agent to provide a reference to the amount of the deposit, the consumer's loan amount, the existing loans assumed or taken subject to at closing, seller credit, other credits, and adjustments for items unpaid by seller. Proposed comment 38(j)(2)(ii)-1 would have clarified that the deposit is any amount paid into a trust account by the consumer under the contract of sale for real estate. This would have been a change from the current definition of deposit in the instructions for RESPA settlement statement line 201 in appendix A to Regulation X, that define the deposit as any amount paid against the sales price prior to settlement, because the amount of the down payment or funds from the consumer disclosed under § 1026.38(i)(4) may also be paid prior to closing. To differentiate between the down payment amount and the deposit amount in § 1026.38(i)(4), the amount of the deposit would have needed to be specified separately from other payments by the consumer against the sales price prior to closing. Proposed comment 38(j)(2)(ii)-2 would have clarified that the amount of the deposit should be reduced by a commensurate amount if any of the deposit is used to pay for a closing cost before closing. Instead, the charge for the closing cost paid from the deposit would have been designated as borrower-paid before closing under § 1026.38(f)(1) or (g)(1), as applicable.

Proposed § 1026.38(j)(2)(iii) would have required the creditor or closing agent to provide a reference to the principal amount of the consumer's new loan and the amount of the new loan made by the creditor or the amount of the first user loan. Proposed comment 38(j)(2)(iii)-1 would have clarified that the first user loan amount disclosed under § 1026.38(j)(2)(iii) is used to finance construction of a new structure or purchase of a manufactured home and that how to disclose a first user loan will depend on whether it is known if the manufactured home will be considered real property at the time of consummation. This comment would have incorporated guidance currently provided in the instructions for RESPA settlement statement line 202 in appendix A to Regulation X and HUD RESPA FAQs p. 47, #2 ("HUD-1 – 200 series").

Proposed § 1026.38(j)(2)(iv) would have required the creditor or closing agent to provide a reference to existing loans assumed or taken subject to at closing by the consumer and the amount of those loans. Proposed comment 38(j)(2)(iv)-1 would have clarified that the amount that must be disclosed under proposed § 1026.38(j)(2)(iv) is the outstanding amount of any loan that the consumer is assuming, or subject to which the consumer is taking title to the property. This comment would have incorporated guidance currently provided in the instructions for RESPA settlement statement line 203 in appendix A to Regulation X. One title insurance company commenter stated that when multiple loans are being assumed, each loan should have a separate itemization. However, an additional itemization for each loan is not necessary for assumed loans, as an aggregate amount is sufficient to describe the nature of the transaction between the consumer and seller. Accordingly, the Bureau is adopting § 1026.38(j)(2)(iv), and comment 38(j)(2)(iv)-1 substantially as proposed with modifications to clarify that the total of all loans being assumed by the consumer is disclosed under § 1026.38(j)(2)(iv).

Proposed § 1026.38(j)(2)(v) would have required the creditor or closing agent to provide a reference to seller credits and the total amount of money that the seller will provide in a lump sum at closing for closing costs, designated borrower-paid at or before closing, as disclosed under proposed § 1026.38(f)(1) and (g)(1), as applicable. Proposed comment 38(j)(2)(v)-1 would have clarified that any amount disclosed under § 1026.38(j)(2)(v) is for generalized seller credits, and that seller credits attributable to a specific closing cost would be designated "seller-paid" under § 1026.38(f)(1) or (g)(1), as applicable. Proposed comment 38(j)(2)(v)-2 would have clarified that any other obligations of the seller to be paid directly to the consumer, such as for issues identified at a walk-through of the property prior to closing, are disclosed under proposed § 1026.38(j)(2)(v).

Proposed § 1026.38(j)(2)(vi) would have required the creditor or closing agent to provide a reference to other credits and the amount of items paid by or on behalf of the consumer and not otherwise disclosed under proposed § 1026.38(j)(2), (f)(1), (g)(1), or (h)(3). Proposed comment 38(j)(2)(vi)-1 would have clarified that any amounts disclosed under proposed § 1026.38(j)(2)(vi) are for other credits from parties other than the seller or creditor, but credits attributable to a specific closing cost would be reflected with a paid by other party designation under proposed § 1026.38(f)(1) or (g)(1). For example, a credit from a real estate agent would have been listed as a credit along with a description of the rebate and include the name of the party giving the credit. This comment would have incorporated guidance provided by HUD RESPA FAQs p. 47-48, #4 ("HUD-1 – 200 series").

Proposed comment 38(j)(2)(vi)-2 would have clarified that any amounts disclosed under § 1026.38(j)(2)(vi) can also be used for disclosing subordinate financing proceeds. For subordinate financing, the principal amount of the loan would have been required to be disclosed with a brief explanation. If the net proceeds of the loan are less than the principal amount, the net proceeds could have been listed on the same lines as the principal amount. This comment would have incorporated guidance provided by the instructions for RESPA settlement statement lines 204 to 209 in appendix A to Regulation X and the HUD RESPA Roundup dated December 2010.

Proposed comment 38(j)(2)(vi)-3 would have clarified that any amounts disclosed under proposed § 1026.38(j)(2)(vi) can also be used for the disclosure of satisfaction of existing subordinate liens by the consumer. Any amounts paid to satisfy existing subordinate liens by the consumer with funds outside of closing funds would have been required to be disclosed with a statement that such amounts were paid outside of closing under § 1026.38(j)(4). This comment would have incorporated guidance provided by the instructions for completing the RESPA settlement disclosure lines 204 to 209 in appendix A to Regulation X and the HUD RESPA Roundup dated September 2010.

Proposed comment 38(j)(2)(vi)-4 would have clarified that any amounts disclosed under proposed § 1026.38(j)(2)(vi) can also be used for disclosing a transferred escrow balance in a refinance transaction as a credit along with a description of the transferred escrow balance. This comment would have incorporated guidance provided by the HUD RESPA FAQs p. 47, #3 ("HUD-1 – 200 series"). Proposed comment 38(j)(2)(vi)-5 would have clarified that any amounts disclosed under § 1026.38(j)(2)(vi) can also be used for gift funds provided on the consumer's behalf by parties not otherwise associated with the transaction.

Several commenters stated that additional guidance was needed concerning whether a rebate or refund from any mortgage insurance premium after the payoff of an existing loan would be disclosed under proposed § 1026.38(j)(2)(vi). The Bureau does not believe additional guidance is necessary in specific relation to a rebate or refund from any mortgage insurance premium after the payoff of an existing loan because the separate disclosure of such a rebate or refund will depend on how the government agency or the mortgage insurer provides the rebate or refund. In some instances, the amount of the premium collected during the consummation of the transaction will be reduced by the amount of the rebate or refund, making any separate disclosure under proposed § 1026.38(j)(2)(vi) redundant and confusing to the consumer. In other instances, the rebate or refund would be sent to the consumer at an indefinite time after consummation, *i.e.*, after the funds sufficient to satisfy the debt were received and have cleared. This would mandate an additional, subsequent provision of the Closing Disclosure to inform the consumer that she received a check that likely was already deposited. Such a result would seem to provide little information or understanding of the transaction to the consumer. The only instance where the rebate or refund would be disclosed to the consumer is where the government agency or mortgage insurer is sending the rebate or refund to the closing agent to be used to reduce the amount due from the consumer at consummation. In that event, the rebate or refund can be disclosed as any other credit from a party other than the creditor or seller under proposed § 1026.38(j)(2)(vi). Accordingly, the Bureau is adopting § 1026.38(j)(2)(vi) and its accompanying commentary as proposed.

Proposed § 1026.38(j)(2)(vii) would have required the creditor or closing agent to provide a reference to adjustments for items unpaid by the seller. Proposed § 1026.38(j)(2)(viii) would have required the creditor or closing agent to provide a reference to city/town taxes, the time period that the seller is responsible for the payment of any such unpaid taxes, and the prorated amount of any such taxes due from the seller at closing. Proposed § 1026.38(j)(2)(ix) would have required the creditor or closing agent to provide a reference to county taxes, the time period that the seller is responsible for the payment of any such unpaid taxes, and the prorated amount of any such unpaid taxes due from the seller at closing. Proposed § 1026.38(j)(2)(x) would have required the creditor or closing agent to provide a reference to assessments, the time period that the seller is responsible for paying any such unpaid taxes, and the prorated amount of any such unpaid assessments due from the seller at closing.

Proposed § 1026.38(j)(2)(xi) would have required the creditor or closing agent to provide a description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay, but which are attributable to a period of time prior to closing.

Proposed comment 38(j)(2)(xi)-1 would have clarified that any amounts disclosed under proposed § 1026.38(j)(2)(xi) are for other items not paid by the seller, such as utilities used by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the closing date, and interest on loan assumptions.

The Bureau did not receive comments concerning proposed § 1026.38(j)(2), except to the extent already discussed in relation to § 1026.38(j)(2)(iv) and (vi), above. Accordingly, the Bureau is adopting § 1026.38(j)(2) and its accompanying commentary, substantially as proposed with the modifications to comment 38(j)(2)(iv)-1 discussed above and a minor modification to the label required under § 1026.38(j)(2)(iii) to conform with form H-25.

38(j)(3) Calculation of Borrower's Transaction

Proposed § 1026.38(j)(3) would have required the creditor or closing agent to disclose the label "Calculation." Proposed § 1026.38(j)(3)(i) would have required the creditor or closing agent to provide a reference to the total amount due from the consumer at closing under § 1026.38(j)(1)(i). Proposed § 1026.38(j)(3)(ii) would have required the creditor or closing agent to provide a reference to the total amount already paid by or on behalf of the consumer at closing as a negative number under § 1026.38(j)(2)(i).

Proposed § 1026.38(j)(3)(iii) would have required the creditor or closing agent to provide a reference to cash to close, a statement of whether the disclosed amount is due from or to the consumer, and the amount due from or to the consumer at closing. Proposed comment 38(j)(3)(iii)-1 would have clarified that the creditor or closing agent must state either the cash required from the consumer at closing, or cash payable to the consumer at closing. Proposed comment 38(j)(3)(iii)-2 would have clarified that the amount disclosed under proposed § 1026.38(j)(3)(iii) is the sum of the amounts disclosed under proposed § 1026.38(j)(3)(i) and (ii). If the result is positive, the amount would be due from the consumer. If the result is negative, the amount would be due to the consumer.

The Bureau did not receive comments concerning the required disclosures under § 1026.38(j)(3). Accordingly, the Bureau is adopting § 1026.38(j)(3) and its accompanying commentary as proposed.

38(j)(4) Items Paid Outside of Closing Funds

Proposed § 1026.38(j)(4)(i) would have required the creditor or closing agent to state amounts paid outside of closing with the phrase “paid outside closing” or “P.O.C.” Proposed comment 38(j)(4)(i)-1 would have clarified that any charges not paid from closing funds but otherwise disclosed under § 1026.38(j) must be marked with the designation “paid outside of closing” or “P.O.C.” with a designation of the party making the payment. This comment would have incorporated guidance provided by the general instructions for the RESPA settlement statement in appendix A to Regulation X. Proposed comment 38(j)(4)(i)-2 would have clarified that charges paid outside of closing funds are not included in computing totals under proposed § 1026.38(j). Proposed § 1026.38 (j)(4)(ii) would have defined closing funds to mean funds collected and disbursed at closing for purposes of proposed § 1026.38(j). The Bureau did not receive comments concerning the requirements of proposed § 1026.38(j)(4). Accordingly, the Bureau is adopting § 1026.38(j)(1) and its accompanying commentary as proposed.

38(k) Summary of Seller’s Transaction

Proposed § 1026.38(k) would have required that the creditor or closing agent provide a summary of the seller’s transaction in a separate table under the heading “Summaries of Transactions” required under § 1026.38(j). Proposed § 1026.38(k) also would have listed the information that must be provided under the subheading “Seller’s Transaction.” Proposed comment 38(k)-1 would have clarified that proposed § 1026.38(k) does not apply in a transaction where there is no seller, such as a refinance transaction. Proposed comment 38(k)-2 would have clarified that proposed § 1026.38(k) refers to comment 38(j)-2 related to the use of addenda to the Closing Disclosure. Proposed comment 38(k)-3 would have referred to comment 38(j)-3 for guidance that the amounts disclosed under certain provisions of proposed § 1026.38(k) are the same as the amounts disclosed under certain provisions of proposed § 1026.38(j).

The Bureau did not receive comments concerning the required disclosures under § 1026.38(k), other than described below. Accordingly, the Bureau is adopting § 1026.38(k) and its accompanying commentary, with modifications for clarity and as discussed below, as proposed with a minor modification for clarity.

38(k)(1) Itemization of Amounts Due to Seller

Proposed § 1026.38(k)(1)(i) would have required the creditor or closing agent to disclose the label "Due to Seller at Closing" and the total amount due to the seller at closing, calculated as the sum of items required to be disclosed under proposed § 1026.38(k)(1)(ii) through (ix), excluding items paid from funds other than closing funds as described in proposed § 1026.38(k)(4)(i). Below this label, § 1026.38(k)(1)(ii) would have required the creditor or closing agent to provide a reference to the sale price of the property and the amount of the real estate contract sales price of the property being sold, excluding the price of any items of tangible personal property if the consumer and seller have agreed to a separate price for such items. In addition, below the same subheading, a reference for adjustments for items paid by seller in advance also would have been required to be provided by the creditor or closing agent.

Proposed § 1026.38(k)(1)(iii) would have required the creditor or closing agent to provide a reference to the sale price of any personal property included in the sale and the amount of the sale price of any personal property excluded from the contract sales price under proposed § 1026.38(k)(ii). Proposed comment 38(k)(1)(iii)-1 would have clarified that guidance regarding the classification of personal property is provided at proposed § 1026.38(j)(1)(ii) and proposed comment 38(j)(1)(ii)-1.

Proposed § 1026.38(k)(1)(iv) would have required the creditor or closing agent to provide a description and the amount of other items to be paid to the seller by the consumer under the contract of sale or other agreement, such as charges that were not listed on the Loan Estimate or items paid by the seller prior to closing but reimbursed by the consumer at consummation. Proposed § 1026.38(k)(1)(v) would have required the creditor or closing agent to provide a reference to adjustments for items paid by the seller in advance. Proposed § 1026.38(k)(1)(vi) would have required the creditor or closing agent to provide a reference to city/town taxes, the time period that the consumer is responsible for reimbursing the seller for any such prepaid taxes, and the prorated amount of any such prepaid taxes due from the consumer at closing. Proposed § 1026.38(k)(1)(vii) would have required the creditor or closing agent to provide a reference to county taxes, the time period that the consumer is responsible for reimbursing the seller for any such prepaid taxes, and the prorated amount of any such prepaid taxes due from the consumer at closing.

Proposed § 1026.38(k)(1)(viii) would have required the creditor or closing agent to provide a reference to assessments, the time period that the consumer is responsible for reimbursing the seller for any such prepaid assessments, and the prorated amount of any such assessments due from the consumer at closing. Proposed § 1026.38(k)(1)(ix) would have required the creditor or closing agent to provide a description and amount of additional items paid by the seller prior to closing that are reimbursed by the consumer at closing.

The Bureau did not receive comments concerning the required disclosures under § 1026.38(k)(1). Accordingly, the Bureau is adopting § 1026.38(k)(1) and its accompanying commentary as proposed.

38(k)(2) Itemization of Amounts Due from Seller

Proposed § 1026.38(k)(2)(i) would have required the creditor or closing agent to disclose the label "Due from Seller at Closing" and the total amount due from the seller at closing, calculated as the sum of items required to be disclosed under proposed § 1026.38(k)(2)(ii) through (xiii), excluding items paid from funds other than closing funds as described in proposed § 1026.38(k)(4)(i). Below this label, proposed § 1026.38(k)(2)(ii) would have required the creditor or closing agent to provide a reference to the amount of any excess deposit, the consumer's loan amount, the existing loans assumed or taken subject to at closing, the payoff amount of a first mortgage loan, the payoff of a second mortgage loan, seller credits, and adjustments for items unpaid by the seller. Proposed comment 38(k)(2)(ii)-1 would have clarified that any excess deposit disbursed to the seller by a party other than the closing agent must be disclosed under § 1026.38(k)(2)(ii) if the party will provide the excess deposit directly to the seller. Proposed comment 38(k)(2)(ii)-2 would have clarified that any amounts of the deposit that were disbursed to the seller prior to closing must be disclosed under proposed § 1026.38(k)(2)(ii).

Two GSEs during an ex parte meeting stated that the calculation of the excess deposit amount was confusing, especially since the amount of the deposit would offset any real estate commission that may be disclosed under § 1026.38(g)(4), above. Thus, the Closing Disclosure would not record the entire amount of the real estate commission paid by the seller in the event the real estate brokerage retained the deposit as part of its commission. The Bureau believes that this may be confusing to consumers and sellers and is adopting comment 38(g)(4)-4 to clarify that any real estate commissions disclosed under § 1026.38(g)(4) should be the full amount of the commission, regardless of the party who holds the deposit. In addition, a title insurance company commenter stated that the description of the excess deposit in proposed comment 38(k)(2)(ii)-2 would have incorrectly calculated the amount shown as excess deposit because the amount already disbursed to the seller as proposed would not be included in the amount, directly contrary to the regulatory text that requires the reduction of the amount due to the seller by any amount paid to the seller prior to consummation. The Bureau is adopting § 1026.38(k)(2)(ii) to require disclosure of the amount disbursed to the seller prior to the real estate closing, and is adopting proposed comment 38(k)(2)(ii)-2 as comment 38(k)(2)(ii)-1, with a modification to indicate that the amount disclosed under § 1026.38(k)(2)(ii) should be any amount of the deposit that has already been disbursed to the seller prior to closing. The Bureau is not adopting proposed comment 38(k)(2)(ii)-1 for the reasons stated above.

Proposed § 1026.38(k)(2)(iii) would have required the creditor or closing agent to provide a reference to and the amount of the subtotal closing costs paid at closing by the seller as calculated under proposed § 1026.38(h)(1). Proposed § 1026.38(k)(2)(iv) would have required the creditor or closing agent to provide a reference to existing loans assumed or taken subject to by the consumer and the amount of those loans. Proposed comment 38(k)(2)(iv)-1 would have clarified that the amount of the outstanding balance of any lien that the consumer is assuming or taking title subject to, and which is to be deducted from the sales price, must be disclosed under proposed § 1026.38(k)(2)(iv). A title insurance company commenter stated that the term lien should be plural instead of singular in proposed comment 38(k)(2)(iv)-1. The Bureau is adopting § 1026.38(k)(2)(iv) and comment 38(k)(2)(iv)-1 substantially as proposed, but modified to state that more than one lien can be included in the amount being assumed.

Proposed § 1026.38(k)(2)(v) would have required the creditor or closing agent to provide a reference to the payoff of the first mortgage loan and the amount of any first loan that will be paid off as part of closing. Proposed § 1026.38(k)(2)(vi) would have required the creditor or closing agent to provide a reference to the payoff of the second mortgage loan and the amount of any second loan that will be paid off as part of closing. A title insurance company commenter stated that additional subordinate financing other than just the second lien should also be disclosed under proposed § 1026.38(k)(2)(vi). However, if there are third or fourth loans that are secured with liens on the property, they would be disclosed pursuant to § 1026.38(k)(2)(viii), below. Accordingly, the Bureau is adopting § 1026.38(k)(2)(vi) as proposed.

Proposed § 1026.38(k)(2)(vii) would have required the creditor or closing agent to provide a reference to seller credits and the total amount of money that the seller will provide as a lump sum at closing to pay for loan costs and other costs, designated borrower-paid at or before closing, as disclosed under proposed § 1026.38(f)(1) and (g)(1), as applicable. Any costs disclosed as seller-paid at or before closing under proposed § 1026.38(f)(1) and (g)(1) would not have been disclosed under proposed § 1026.38(k)(vii). Proposed comment (k)(2)(vii)-1 would have clarified that any other obligations of the seller to be paid directly to the consumer, such as credits for issues identified at a walk-through of the property prior to closing, would have been disclosed under proposed § 1026.38(k)(2)(vii).

Proposed § 1026.38(k)(2)(viii) would have required the creditor or closing agent to provide a description and the amount of any and all other obligations required to be paid by the seller at closing, including any lien-related payoffs, fees, or obligations. Proposed comment 38(k)(2)(viii)-1 would have clarified that amounts that must be paid in order to satisfy other seller obligations to clear title to the property must be disclosed under proposed § 1026.38(k)(2)(viii). Proposed comment 38(k)(2)(viii)-2 would have clarified that the satisfaction of existing liens by the consumer that are not deducted from the sales price are disclosed under proposed § 1026.38(k)(2)(viii) and must be disclosed as paid outside of closing under § 1026.38(k)(4)(i). This guidance would have been consistent with proposed comment 38(j)(2)(vi)-2, and would have incorporated guidance provided by the HUD RESPA Roundup dated December 2010. Proposed comment 38(k)(2)(viii)-3 would have clarified that escrowed funds held by the closing agent for payment of invoices related to repairs, water, fuel, or other utility bills received after closing that cannot be prorated are disclosed under proposed § 1026.38(k)(2)(viii), and that subsequent disclosure of the amounts paid after consummation is optional. This guidance would have been consistent with the instructions for RESPA settlement statement lines 506 to 509 in appendix A to Regulation X.

A title insurance company commenter stated that the subsequent disclosure of payments from escrowed funds held by the closing agent for payment of invoices related to repairs, water, fuel, or other utility bills received after consummation should be mandatory. However, closing agents can be regulated as part of the business of providing title insurance in some States. These States can have different requirements related to the subsequent disclosure of these amounts and the handling of the amounts held by the closing agent. The Bureau believes that providing the disclosure of the amounts after consummation should be optional to provide flexibility to the closing agent to comply with applicable State law. However, the Bureau notes that § 1026.19(f)(2)(iii) requires a creditor to provide a corrected Closing Disclosure if a post-consummation event occurs during the 30-day period following consummation that results in a change to the actual amount paid by the consumer. Similarly, § 1026.19(f)(4)(ii) requires post-consummation disclosures for the seller for events that occur during the 30-day period following consummation. Otherwise, the disclosures related to the transaction could be a process that could continue for years and possibly implicate State escheatment procedures, in some instances. Accordingly, the Bureau is adopting § 1026.38(k)(2)(viii) and its accompanying commentary as substantially as proposed, with a modification to comment 38(k)(2)(viii)-3 to include a reference to the requirement under § 1026.19(f)(2)(iii).

Proposed § 1026.38(k)(2)(ix) would have required the creditor or closing agent to provide a reference to adjustments for items unpaid by the seller. Proposed § 1026.38(k)(2)(x) would have required the creditor or closing agent to provide a reference to city/town taxes, the time period that the seller is responsible for payment of any such unpaid taxes, and the prorated amount of any such unpaid taxes due from the seller at closing. Proposed § 1026.38(k)(2)(xi) would have required the creditor or closing agent to provide a reference to county taxes, the time period that the seller is responsible for the payment of any such unpaid taxes, and the prorated amount of any such unpaid taxes due from the seller at closing. Proposed § 1026.38(k)(2)(xii) would have required the creditor or closing agent to provide a reference to assessments, the time period that the seller is responsible for payment of any such unpaid assessments, and the prorated amount of any such unpaid assessments due from the seller at closing. Proposed § 1026.38(k)(2)(xiii) would have required the creditor or closing agent to provide a description and the amount of any additional items that have not yet been paid, and which the seller is expected to pay at closing, but which are attributable in part to a period of time prior to the closing.

The Bureau did not receive any comments concerning the required disclosures under § 1026.38(k)(2), except for the comments provided related to § 1026.38(k)(2)(iv), (vi), and (vii) as discussed above. Accordingly, the Bureau is adopting § 1026.38(k)(2) and its accompanying commentary substantially as proposed, with the modifications to comments 38(k)(2)(iv)-1 and 38(k)(2)(viii)-3 discussed above and with minor modifications to § 1026.38(k)(2)(ii) for clarity and to § 1026.38(k)(2)(iii) to conform to form H-25.

38(k)(3) Calculation of Seller's Transaction

Proposed § 1026.38(k)(3) would have required the creditor or closing agent to disclose the subheading "Calculation." Proposed § 1026.38(k)(3)(i) would have required the creditor or closing agent to provide a reference to the total amount due to the seller at closing and the amount described under proposed § 1026.38(k)(1)(i). Proposed § 1026.38(ii) would have required the creditor or closing agent to provide a reference to the total amount due from the seller at closing and the amount described as a negative number under proposed § 1026.38(k)(2)(i).

Proposed § 1026.38(k)(3)(iii) would have required the creditor or closing agent to include the word "Cash," a statement of whether the disclosed amount is due from or to the seller, and the amount due from or to the seller at closing. Proposed comment 38(k)(3)(iii)-1 would have clarified that the creditor or closing agent must state either the cash required from the seller at closing, or the cash payable to the seller at closing. Proposed comment 38(k)(3)(iii)-2 would have clarified that the amount disclosed under proposed § 1026.38(k)(3)(iii) is the sum of the amounts disclosed under proposed § 1026.38(k)(3)(i) and the amount disclosed under proposed § 1026.38(k)(ii). If the result is positive, the amount would be due to the seller. If the result is negative, the amount would be due from the seller.

The Bureau did not receive comments concerning the required disclosures under § 1026.38(k)(3). Accordingly, the Bureau is adopting § 1026.38(k)(3) and its accompanying commentary as proposed.

38(k)(4) Items Paid Outside of Closing Funds

Proposed § 1026.38(k)(4)(i) would have required the creditor or closing agent to state amounts paid outside of closing with the phrase "Paid Outside of Closing" or "P.O.C." and would have provided that closing funds are funds collected and disbursed at consummation by the creditor or closing agent. Proposed § 1026.38(k)(4)(ii) would have defined closing funds to mean funds collected and disbursed at consummation for purposes of proposed § 1026.38(k).

The Bureau did not receive comments concerning the requirements of § 1026.38(k)(4). Accordingly, the Bureau is adopting § 1026.38(k)(4) and its accompanying commentary as proposed.

38(l) Loan Disclosures

As discussed below, TILA requires that creditors provide consumers with a variety of disclosures prior to consummation regarding requirements in or arising from the legal obligation: assumption, demand feature, late payment, negative amortization, partial payment policy, security interest, and escrow account information. For purposes of the integrated disclosure form that would have been required by proposed § 1026.19(f), these disclosures would have been required to be grouped together under the master heading "Additional Information About This Loan" and under the heading "Loan Disclosures."

Several industry commenters criticized the design of the Loan Disclosures section of the Closing Disclosure, as illustrated by proposed from H-25. A non-depository lender commented that the checkboxes for this section should be made larger to make them more visible for consumers. An association of State regulators commented that the many technical disclosures included in this section could be confusing to consumers and recommended that the disclosures be broken up with bullet points or reference web-based tools to help consumers understand them. One document preparation company commenter requested guidance on whether the text shown on form H-25 with respect to the disclosures in § 1026.38(l) is required or whether it can change.

The Bureau declines to revise the design of the Closing Disclosure as suggested by the commenter with respect to the disclosures required by § 1026.38(l). The Bureau is adopting § 1026.38(l) as proposed. With respect to the comment requesting clarification of whether the text is variable or required, the Bureau notes that under § 1026.38(l), the text illustrated by form H-25 of appendix H to Regulation Z is required for federally related mortgage loans, but is a model form for transactions subject to TILA only, and not RESPA. The Bureau recognizes that there is a large amount of information on page 4 of the Closing Disclosure as required by § 1026.38(l). With respect to the clarity of the disclosures under § 1026.38(l), these disclosures are mandated by statute, and three of these disclosures have been added to TILA by the Dodd-Frank Act. The Bureau has made every effort to draft them as concisely and accurately as possible so that consumers will be able to understand them, and included them in the prototype disclosures at the Bureau's consumer testing. *See* Kleimann Testing Report at 17.

38(l)(1) Assumption

Proposed § 1026.38(l)(1) would have implemented TILA section 128(a)(13) for transactions subject to § 1026.19(f) by requiring the creditor to disclose the statement required by § 1026.37(m)(2), which describes whether a subsequent purchaser may be permitted to assume the remaining loan obligation. For a detailed description of the Bureau's implementation of TILA section 128(a)(13) and the legal authority for this provision, see the section-by-section analysis of § 1026.37(m)(2). For the reasons discussed in the section-by-section analysis of § 1026.37(m)(2), the Bureau is adopting § 1026.38(l)(1) as proposed, based on the authority described in the proposal. The Bureau is revising the assumption disclosure illustrated on form H-25 of appendix H to Regulation Z, for consistency with the disclosure required for the Loan Estimate, as illustrated by form H-24.

38(l)(2) Demand Feature

TILA section 128(a)(12) requires the creditor to disclose a statement that the consumer should refer to the appropriate contract document for information about certain loan features, including the right to accelerate the maturity of the debt. 15 U.S.C. 1638(a)(12). Current § 1026.18(p) implements TILA section 128(a)(12) by requiring, among other things, a statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, and the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. In addition, current § 1026.18(i) requires the creditor to disclose whether the legal obligation includes a demand feature and, if the disclosures are based on the assumed maturity of one year as described in § 1026.17(c)(5), the creditor must state that fact.

Pursuant to its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau did not propose to incorporate into § 1026.38(l)(2) the special disclosure requirement regarding assumed maturity of one year in current § 1026.18(i) or the optional contract reference disclosures in current § 1026.18(p). The proposal stated that, by exempting disclosure of information that will not be useful to consumers, the disclosure would effectuate the purposes of TILA by enhancing consumer understanding of mortgage transactions, consistent with TILA section 105(a). Similarly, the Bureau stated it considered the factors in TILA section 105(f) and that it believed that an exemption was appropriate under that provision. Specifically, the Bureau stated its belief in the proposal that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them, that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer, and that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Furthermore, the Bureau stated that the exemption will ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed § 1026.38(l)(2) would have incorporated certain of the requirements of current § 1026.18(i) and (p) for transactions subject to § 1026.19(f) by requiring that the creditor disclose whether the legal obligation permits the creditor to demand early repayment of the loan and, if so, a statement that the consumer should review the loan document for more details. The information required by proposed § 1026.38(l)(2) would have been required to be labeled "Demand Feature." Proposed comment 38(l)(2)-1 would have provided a cross-reference to comment 18(i)-2 for a description of demand features that would trigger the disclosure requirement in proposed § 1026.38(l)(2).

An individual mortgage broker commented that the proposed disclosure required by § 1026.38(l)(2) was too complex and should be simplified so that the consumer could understand how the demand feature affects them. The Bureau does not believe that the disclosure required by § 1026.38(l)(2) is confusing for consumers. The Bureau's consumer testing revealed that most consumers understood this disclosure as proposed. *See* Kleimann Testing Report at 188. The Bureau is adopting § 1026.38(l)(2) and comment 38(l)(2)-1 as proposed.

38(l)(3) Late Payment

TILA section 128(a)(10) requires disclosure of any dollar charge or percentage amount that may be imposed by a creditor due to a late payment, other than a deferral or extension charge. 15 U.S.C. 1638(a)(10). This requirement is currently implemented in § 1026.18(l). Proposed § 1026.38(l)(3) would have implemented TILA section 128(a)(10) for loans subject to § 1026.19(f) by requiring the creditor to disclose the statement required by § 1026.37(m)(4), which details any charge that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment may be late to trigger the late payment fee. Proposed comment 38(l)(3)-1 would have referred to the commentary for § 1026.37(m)(4) for guidance on compliance with § 1026.38(l)(3). For a detailed description of the Bureau's proposed implementation of TILA section 128(a)(10) and the legal authority for the proposal, see the section-by-section analysis of § 1026.37(m)(4).

The Bureau did not receive any comments on the substance of § 1026.38(l)(3) and is adopting it as proposed and is adopting comment 38(l)(3)-1 substantially as proposed, with a minor modification for clarity. The Bureau received one comment regarding the design of the disclosure required by § 1026.38(l)(3) on proposed form H-25, however. For the reasons discussed in the section-by-section analysis of § 1026.37(m)(4), and as described in the section-by-section analysis of appendix H to Regulation Z, the Bureau is illustrating a revised design for the disclosure required by § 1026.38(l)(3) in form H-25 of appendix H to Regulation Z that contains greater emphasis for the variable text to be inputted by the creditor.

38(l)(4) Negative Amortization

New TILA section 129C(f), which was added by section 1414(a) of the Dodd-Frank Act, provides that no creditor may extend credit to a borrower in connection with a transaction secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides for or permits a payment plan that may result in negative amortization unless the creditor provides the consumer with a notice that the transaction may or will result in negative amortization. 15 U.S.C. 1639c(f). Under TILA section 129C(f), before consummation of the transaction, the creditor must provide the consumer with a statement that: (1) the pending transaction will or may, as applicable, result in negative amortization; (2) describes negative amortization in the manner prescribed by the Bureau; (3) negative amortization increases the loan balance; and (4) negative amortization decreases the consumer's equity in the property. 15 U.S.C. 1639c(f)(1).

Although TILA section 129C(f) is new, both Regulations Z and X currently contain disclosure requirements for loan products that may negatively amortize. In Regulation Z, if the loan product contains features that may cause the loan amount to increase, § 1026.18(s)(4)(C) requires a statement that warns the consumer that the minimum payment covers only some interest, does not repay any principal, and will cause the loan amount to increase, for closed-end transactions secured by real property or a dwelling. Current appendix A to Regulation X requires a similar statement in the "Loan Terms" section of the RESPA settlement statement, which discloses whether the loan balance may increase even if loan payments are made on time.

The Bureau proposed § 1026.38(l)(4) to implement TILA section 129C(f) for transactions subject to § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). Specifically, proposed § 1026.38(l)(4) would have required a statement of whether the regular periodic payment may cause the principal balance to increase. If the regular periodic payment does not cover all of the interest due, proposed § 1026.38(l)(4)(i) would have required a statement that the principal balance will increase, that the principal balance will likely exceed the original loan amount, and that increases in the principal balance will lower the consumer's equity in the property. In transactions in which the consumer has the option of making regular periodic payments that do not cover all of the interest accrued that month, proposed § 1026.38(l)(4)(ii) would have required a statement that, if the consumer chooses a periodic payment option that does not cover all of the interest due, the principal balance may exceed the original loan amount and that increases in the principal balance decrease the consumer's equity in the property. The statements required by proposed § 1026.38(l)(4)(i) and (ii) would have been located under the subheading "Negative Amortization (Increase in Loan Amount)."

A national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 129C and any regulations promulgated thereunder. The general section-by-section analysis of § 1026.19 provides a more detailed discussion of the Bureau's decision to expand the scope of some of the disclosure requirements set forth in TILA, as amended by the Dodd Frank Act. In addition, the Bureau believes that the disclosure of the fact that a transaction may negatively amortize would be just as useful to a consumer in a credit transaction secured by a consumer's interest in a timeshare plan as to a consumer in a credit transaction secured by an interest in real property or real property with a dwelling. The Bureau continues to believe that proposed § 1026.38(l)(4) will effectuate the purposes of TILA. Accordingly, § 1026.38(l)(4) is adopted as proposed, based on the authority stated in the proposal.

38(l)(5) Partial Payment Policy

TILA section 129C(h), added by section 1414(d) of the Dodd-Frank Act, provides that, in the case of any residential mortgage loan, the creditor must disclose, prior to settlement or at the time such person becomes the creditor for an existing loan, the creditor's policy regarding the acceptance of partial payments, and if partial payments are accepted, how such payments will be applied to the mortgage and whether such payments will be placed in escrow. 15 U.S.C. 1631c(h).

The Bureau proposed § 1026.38(l)(5) to implement the pre-consummation disclosure requirements of TILA section 129C(h), pursuant to its implementation authority under TILA section 105(a).[302] Proposed § 1026.38(l)(5) would have required the creditor to disclose, under the subheading "Partial Payment Policy," a statement of whether it will accept monthly payments that are less than the full amount due and that, if the loan is sold, the new creditor may have a different policy. The proposed provision would have required that, if partial payments are accepted, the creditor must also provide a brief description of its partial payment policy, including the manner and order in which any partial payments are applied to the principal, interest, or an escrow account for partial payments and whether any penalties apply.

Comments

The Bureau received a number of comments on proposed § 1026.38(l)(5). Some commenters, including several national trade associations representing banks generally, consumer mortgage companies, and large mortgage finance companies, asserted that the Bureau

[302] The Bureau proposed to implement the disclosure requirements of TILA section 129C(h) that apply after consummation in proposed § 1026.39.

should withdraw the proposal to require the creditor to provide the pre-consummation partial payment disclosure on the Closing Disclosure. The commenters expressed concern that the proposal would have required creditors to provide information about an issue, the treatment of partial payments, which they asserted is a complex mortgage servicing issue. Some commenters were also concerned that the disclosure could be misleading if the creditor transfers servicing of a consumer's mortgage loan shortly after consummation and the servicer has a different partial payment policy. A GSE commenter suggested that the Bureau should require the disclosure only if the creditor will also be the loan's servicer. If the creditor will not be servicing the loan, then the GSE commenter asserted that the disclosure should come in a subsequent communication from the ultimate servicer. The GSE commenter further recommended that the Bureau require that a partial payment policy be disclosed only if the servicer maintains a policy of not accepting any partial payments.

Commenters also asserted that it is difficult to describe partial payment policies because how such payments are processed is a complex process. Based on the comments, it appears that the treatment of partial payments could vary on a loan-by-loan basis even within the same institution. National trade association commenters representing banks generally, consumer mortgage companies, and large mortgage finance companies further asserted that if the Bureau issues final regulations requiring mortgage servicers to provide a partial payment disclosure in connection with the Bureau's separate mortgage servicing rulemaking, then it would be unnecessary for the Bureau to also require creditors to provide the pre-consummation partial payment disclosure. A title company commenter expressed concern that the disclosure could lead consumers to believe that making partial payments is an acceptable practice.

Commenters asserted that if the Bureau decides to finalize the proposal, that the Bureau should define the term “partial payment,” what actions constitute acceptance of a partial payment, and provide model language that creditors may use to describe their partial payment policies. In an ex parte communication, two GSEs stated that the Bureau should require creditors to disclose whether a consumer will be in default when partial payments are accepted.

Some commenters, including national trade associations representing banks, general consumer mortgage companies, and large mortgage finance companies, suggested that the Bureau adopt a provision in the final rule that would provide that creditors comply with the partial payment policy disclosure requirement by providing a statement directing the consumer to contact the consumer’s servicer about how the consumer’s partial payments would be applied. Industry commenters further suggested that the Bureau provide creditors with additional space to describe the creditor’s partial payment policy on final form H-25 of appendix H to Regulation Z, because the space allotted for the disclosure, as shown in proposed form H-25, appeared inadequate. Lastly, a national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 129C and any regulations promulgated thereunder.

Discussion

The Bureau recognizes that a creditor may service a consumer’s mortgage loan post-consummation or transfer the servicing of the loan shortly after consummation. The Bureau additionally recognizes that collecting and allocating payments are typical duties related to loan servicing. However, TILA section 129C(h) clearly establishes that the creditor has a distinct disclosure obligation related to partial payments. The Bureau does not believe it should exempt an express pre-consummation disclosure requirement simply because another rule required a similar disclosure to consumers after consummation. Both the servicing disclosure requirement, implemented under the Bureau's 2013 TILA Servicing Final Rule and the pre-consummation disclosure requirement may provide useful information to consumers at different stages of a transaction. Accordingly, the Bureau believes that consumers may benefit from receiving both disclosures. The Bureau does not believe that the proposed pre-consummation partial payment disclosure should be withdrawn because it describes a typical servicing duty or because the Bureau has issued disclosure requirements related to the acceptance of partial payments under the Bureau's 2013 TILA Servicing Final Rule.

The Bureau also believes that consumer understanding may be improved and that consumers may avoid the uninformed use of credit if the Bureau required creditors to provide the disclosure to the consumer pre-consummation and integrated the disclosure with the other disclosures required under § 1026.38. If the Bureau did not integrate this disclosure into the integrated disclosure, the disclosure would have to be provided separately by the creditor, which would increase the risk of consumer confusion and information overload, and increase compliance burden for industry.

With respect to the concern that the disclosure could be misleading in situations where creditors transfer the servicing of a consumer's loan shortly after consummation, and the servicer has a different policy, the Bureau believes that this concern suggests that the creditor and the servicer to whom the creditor intends to transfer the servicing of the loan must effectively communicate regarding the partial payment policy that will apply to the transaction. With respect to the argument that the disclosure should not apply to timeshare lenders, the general section-by-section analysis of § 1026.19 provides a more detailed discussion of the Bureau's decision to expand the scope of some of the disclosure requirements set forth in TILA, as amended by the Dodd-Frank Act. In addition, the Bureau believes that the disclosure of the creditor's partial payment policy would be just as useful to a consumer in a credit transaction secured by a timeshare plan as to a consumer in a credit transaction secured by an interest in real property or real property with a dwelling.

In response to concerns about the creditor's ability to adequately disclose their partial payment policy under the proposed provision, the Bureau has modified the disclosure requirement to facilitate compliance, which is one of the purposes of the integrated disclosure requirements stated by sections 1098 and 1100A of the Dodd-Frank Act. The modifications create more generalized partial payment disclosures. The Bureau modified the disclosures to respond to the concern that the creditor may not have a uniform policy on the acceptance and application of partial payments, which would be difficult to input on the Closing Disclosure for each transaction. The Bureau modified the disclosures, as illustrated by form H-25 of appendix H to Regulation Z, to provide for checkboxes to indicate the creditor's general policy, instead of a space in which the creditor would be required to write in its policy in free-form text. The Bureau also modified the disclosure to clarify that the term "partial payment" means periodic payment less than the full amount due, which the Bureau believes will aid consumer understanding, based on the results of its consumer testing. The Bureau conducted three rounds of consumer testing of the modified disclosure. At the Bureau's consumer testing, consumers were able to use the modified disclosure to understand the creditor's partial payment policy. *See* Kleimann Post-Proposal Testing Report at 30, 34, 36-37, and 42.

With respect to the concern that the disclosure would suggest to the consumer that making partial payments is acceptable, the Bureau believes that the checkbox structure, which shows that some creditors may not accept partial payments, will inform consumers that partial payment may not be an acceptable practice. With respect to the suggestion that the Bureau should disclose that consumers may be in default upon the making of a partial payment that is accepted, the Bureau believes that it would be duplicative and potentially confusing to the consumer to add an additional disclosure that the consumer may be in default. Under final § 1026.38(p)(2), the creditor must disclose to the consumer on the Closing Disclosure that the consumer should refer to the loan document and security instrument for information about, among other things, what constitutes a default under the legal obligation.

With respect to the suggestion that the Bureau modify the partial payment policy disclosure requirement to require only a statement directing the consumer to contact the consumer's servicer about the application of partial payments, the Bureau does not believe such a disclosure would aid consumer understanding of the consumer's transaction, because it would not inform the consumer of the creditor's policy for the transaction. The Bureau does not believe such statement would be effective at improving consumer understanding and helping consumers avoid the uninformed use of credit.

Final Rule

The Bureau is adopting § 1026.38(l)(5) with modifications to address concerns regarding compliance with the proposed disclosure requirements. As adopted, § 1026.38(l)(5) requires the creditor to disclose, under the subheading "Partial Payments," a statement of whether the creditor accepts periodic payments that are less than the full amount due. If the creditor may accept such payments, and apply the payments to the consumer's loan, or if the creditor may hold the payments in a separate account until the consumer pays the rest of the payment, or if the creditor does not accept any partial payments, then the disclosure would have had to state that fact. Additionally, similar to the proposal, § 1026.38(l)(5) requires a statement that, if the loan is sold, the new creditor may have a different policy.

As adopted, § 1026.38(l)(5) modifies the statutory requirement that the creditor must describe how a consumer's partial payments, if accepted, will be applied to the consumer's account and whether any penalties will apply. The Bureau understands that there may be many variations regarding how partial payments are processed on a loan-by-loan basis, even within one institution. Accordingly, a detailed disclosure describing each and every partial payment policy could be costly and burdensome to implement, and may confuse consumers. As described above, the Bureau believes that the more generalized disclosures the Bureau is adopting in § 1026.38(l)(5) are effective at informing consumers and will facilitate compliance. The Bureau is adopting § 1026.38(l)(5) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b).[303] The Bureau believes the modification will ensure that the features of the transaction are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(l)(6) Security Interest

TILA section 128(a)(9) requires the creditor to provide a statement that a security interest

[303] The disclosure requirements of TILA section 129C(h) that apply after consummation are implemented in § 1026.39.

has been taken in the property that secures the transaction or in property not purchased as part of the transaction by item or type. 15 U.S.C. 1638(a)(9). This requirement is implemented in current § 1026.18(m), which requires disclosure of the fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type.

The Bureau proposed to require creditors to disclose the address of the property in which a security interest will be taken and a statement that the consumer may lose the property if he or she does not make payments or satisfy other requirements, pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau stated it proposed § 1026.38(l)(6) to implement TILA section 128(a)(9) for transactions subject to § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). The Bureau stated its belief in the proposal that the proposed disclosures promote the informed use of credit, which is a purpose of TILA, by clearly disclosing the property in which a security interest is being granted and informing consumers of the potential consequences of the creditor's security interest in the property. In addition, the Bureau stated its belief that the proposed disclosures will ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Proposed § 1026.38(l)(6) would have required that the creditor disclose, if the creditor will take a security interest in the property that is the subject of a mortgage loan transaction, that the consumer is granting it a security interest in that property, the address of the property, and a statement that the consumer may lose the property if the consumer fails to make payments or satisfy other requirements of the legal obligation. The information required by proposed § 1026.38(l)(6) would have been located under the subheading “Security Interest.”

One industry commenter stated that the proposed security interest disclosure is redundant but did not state the reason or identify the other section of the Closing Disclosure that might render it redundant. A document preparation company and a national title company requested guidance on whether a legal description or other description of the real property could be disclosed where the property securing the transaction does not have a street address. A national trade association representing developers of timeshare and other similar fractional interest real estate products commented that requiring the property address was unnecessary for a timeshare and could be confusing to consumers, presumably because a timeshare consumer is not necessarily purchasing a security interest in a particular property. A national trade association representing mortgage lenders and a GSE commented that some transactions are secured by personal property and that the disclosure required by § 1026.38(l)(6) should permit disclosure of personal property. Several industry commenters noted that the use of underscoring on form H-25 in the Security Interest disclosure makes the information disclosed difficult to read and that it would be difficult and expensive to program software to produce a form with underscoring.

With respect to the comment requesting guidance of whether a legal description or other description would be permitted under § 1026.38(l)(6), the Bureau understands that additional guidance may facilitate compliance. Accordingly, the Bureau is adopting comment 38(l)(6)-1 to clarify that where there is no street address, § 1026.38(l)(6) requires disclosure of other location information for the property, such as a lot number. This comment also clarifies that a zip code is required in all instances. With respect to the timeshare commenter, the Bureau notes that comment 38(l)(6)-1 has been revised to clarify that § 1026.38(l)(6) permits disclosure as “other location information” of a lot, square, or other such number or other legal description of the property assigned by the local governing authority, or if no such number or description is available, the name of the timeshare property or properties with a designation indicating that the property is an interest in a timeshare plan. The Bureau also agrees that personal property securing a transaction should be disclosed on the Closing Disclosure and is adding comment 38(l)(6)-2 to clarify that where personal property also secures the credit transaction, a description of that property may be disclosed pursuant to § 1026.38(l)(6) on form H-25. The Bureau understands that the personal property to be disclosed may not fit in the space on form H-25 and thus is adopting comment 38(l)(6)-2 to clarify the creditor may disclose personal property on an addendum to the extent the personal property does not fit within the space provided on form H-25. The comment also clarifies that the creditor may use one addendum to disclose personal property securing the transaction under § 1026.38(l)(6) and (a)(3)(vi) and includes a cross-reference to comment 38(a)(3)(vi)-1.

The Bureau also understands that the underscoring illustrated by proposed form H-25 may increase programming costs, and may be difficult for consumers to read, and thus is revising form H-25 to delete the underscoring. Instead, the completed samples of form H-25 will illustrate the information provided by the creditor for the Security Interest disclosure with italics to emphasize that the italicized information has been completed by the creditor.

For the aforementioned reasons, the Bureau is adopting § 1026.38(l)(6) substantially as proposed, with a minor modification to clarify that the property address disclosed must include the zip code and that the consumer is granting a security interest in the property, based on the authority stated in the proposal. The Bureau is also adding comments 38(l)(6)-1 and -2, as described above, to provide additional clarity that was requested by commenters.

38(l)(7) Escrow Account

The Bureau's Proposal

As discussed in greater detail above in the section-by-section analysis of § 1026.20(e) (Escrow account cancellation notice for certain mortgage transactions), sections 1461 and 1462 of the Dodd-Frank Act amended TILA to create a new section 129D, which establishes certain requirements for escrow accounts for consumer credit transactions secured by a first lien on a consumer's principal dwelling (other than a consumer credit transaction under an open-end credit plan or a reverse mortgage), including, among other things, certain disclosure requirements when an escrow account is established and certain other disclosures when an escrow account is refused or cancelled by the consumer, respectively.

Specifically, TILA section 129D(h) establishes that a creditor must provide the Pre-Consummation Escrow Establishment Disclosure containing the information set forth under TILA section 129D(h) when an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is established in connection with the transaction. Additionally, pursuant to TILA section 129D(j)(1)(A), a creditor or servicer must provide the Pre-Consummation Escrow Waiver Disclosure containing the information set forth under TILA section 129D(j)(2) when an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction.

Under TILA section 129D(b), however, application of these mandatory escrow requirements is limited to the following situations: (1) where an escrow account is required by Federal or State law; (2) where the loan is made, guaranteed, or insured by a Federal or State agency; (3) where the transaction's APR exceeds the average prime offer rate by prescribed margins; and (4) where an escrow account is required by regulation.

As discussed above in the section-by-section analysis of § 1026.20(e), the Board's 2011 Escrows Proposal proposed to implement the new TILA escrow requirements, and most aspects of that proposal have been implemented in a separate rulemaking. *See* 78 FR 4726 (Jan. 22, 2013). But the Bureau proposed to implement the Pre-Consummation Escrow Establishment Disclosure and the Pre-Consummation Escrow Waiver Disclosure, along with certain other new disclosure requirements for mortgage transactions established by title XIV of the Dodd-Frank Act, as part of the TILA-RESPA Proposal. The Bureau believed that implementing these disclosures and the integrated disclosures that satisfy the applicable sections of TILA and RESPA together would benefit consumers and facilitate compliance for industry with TILA and RESPA. The Bureau also believed that consumers would benefit from a consolidated disclosure that conveys loan terms and costs to consumers in a coordinated way, and industry would benefit by integrating two sets of overlapping disclosures into a single form and by avoiding regulatory burden associated with revising systems and practices multiple times.

Like the Board's 2011 Escrows Proposal, the Bureau proposed to apply the TILA section 129D escrow requirements to all transactions that would have been subject to proposed § 1026.19(f). In doing so, the Bureau was relying on its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau believed that requiring disclosures regarding the establishment of an escrow account, as well as the non-establishment of an escrow account, would provide consumers with information needed to evaluate the costs and fees associated with mortgage loans and to understand their ongoing monthly obligations regardless of whether the transaction would include an escrow account. The Bureau stated in the proposal that disclosure of this information would ensure that consumers have the facts needed to understand a key requirement of their mortgage loan and avoid the uninformed use of credit, consistent with the purposes of TILA. In addition, the Bureau stated that it believed that the proposed disclosures would ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and would improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

Accordingly, the Bureau proposed to implement the disclosure requirements of TILA section 129D(h) and (j) relating to the Pre-Consummation Escrow Establishment Disclosure and the Pre-Consummation Escrow Waiver Disclosure in proposed § 1026.38(l)(7), pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Under the subheading "Escrow Account," proposed § 1026.38(l)(7) would have required the creditor to disclose whether the consumer's loan will have an escrow account, and certain details about the payments made using escrow account funds and those the consumer must make directly.

Under the "Escrow Account" subheading and under the reference "For now," proposed § 1026.38(l)(7)(i) would have required a statement that an escrow account may also be called an "impound" or "trust" account and a statement of whether the creditor has or will establish an escrow account at or before consummation in connection with the transaction for the costs that will be paid using escrow account funds described in proposed § 1026.38(l)(7)(i)(A).

Proposed § 1026.38(l)(7)(i)(A) would have required the following disclosures under the "For now" reference: (1) a statement that the creditor may be liable for penalties and interest if it fails to make a payment for any costs for which the escrow account has been established, (2) a statement that the consumer would be required to pay such costs directly if no account is established, and (3) a table titled "Escrow" that contains, if an escrow account is or will be established, an itemization of the following: (i) the total amount the consumer will be required to pay into an escrow account over the first year after consummation for payment of the charges described in § 1026.37(c)(4)(ii), labeled "Escrowed Property Costs over Year 1," together with a descriptive name for each such charge, calculated as the amount disclosed under § 1026.38(l)(7)(i)(A)(*4*) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation; (ii) the estimated amount the consumer is likely to pay during the first year after consummation for charges described in § 1026.37(c)(4)(ii) that are known to the creditor and that will not be paid using escrow account funds, labeled "Non-Escrowed Property Costs over Year 1," together with a descriptive name for each such charge and a statement that the consumer may have to pay other costs that are not listed; (iii) the total amount disclosed pursuant to § 1026.38(g)(3), a statement that the payment is a cushion for the escrow account, labeled "Initial Payment," and a reference to the information disclosed pursuant to § 1026.38(g)(3); and (iv) the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation for payment of the charges described in § 1026.37(c)(4)(ii), labeled "Monthly Payment."

Proposed § 1026.38(l)(7)(i)(A)(*5*) would have provided that a creditor complies with the requirements of § 1026.38(l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17. Proposed comment 38(l)(7)(i)(A)(*2*)-1 and 38(l)(7)(i)(A)(*4*)-1 would have provided guidance to creditors on the calculation of the itemized amounts that would have been required to be disclosed pursuant to proposed § 1026.38(l)(7)(i)(A).

Proposed § 1026.38(l)(7)(i)(B) would have required a statement of whether the loan will not have an escrow account and the reason the loan will not have an escrow account. For example, if the loan will not have an escrow account because either the consumer declined to have one or because the creditor does not require or offer them, the disclosure must state that fact. Proposed § 1026.38(l)(7)(i)(B) also would have required a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, as well as a statement that the consumer may contact the creditor to inquire about the availability of an escrow account. Finally, proposed § 1026.38(l)(7)(i)(B) would have required a table titled "No Escrow," that contains, if an escrow account will not be established, an itemization of the following: (1) the estimated total amount the consumer will pay directly for charges described in § 1026.37(c)(4)(ii) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled as "Estimated Property Costs over Year 1," and (2) the amount of any fee that the creditor may impose for not establishing an escrow account, labeled "Escrow Waiver Fee."

The disclosures that would have been required in proposed § 1026.38(l)(7)(i)(B) would have been under the "For now" reference that would have been required in proposed § 1026.38(l)(7)(i). Proposed comment 38(l)(7)(i)(B)(*1*)-1 would have provided guidance to creditors on calculation of the amounts that would have been required to be disclosed pursuant to proposed § 1026.38(l)(7)(i)(B).

Under the subheading "Escrow Account" that would have been required by proposed § 1026.38(l)(7) and under the reference "In the future," proposed § 1026.38(l)(7)(ii) would have required information about future requirements for property costs. Specifically, proposed § 1026.38(l)(7)(ii)(A) would have required a statement that the consumer's property costs may change and, as a result, the consumer's escrow amount may change. Proposed § 1026.38(l)(7)(ii)(B) would have required a statement that the consumer may be able to cancel an established escrow account, but if the account is cancelled the consumer would be required to pay those costs directly unless a new escrow account is established. Proposed § 1026.38(l)(7)(ii)(C) would have required a description of the consequences of failing to pay the property costs, including the imposition of fines and penalties or imposition of a tax lien by the consumer's State and local government, and possible actions by the creditor, such as adding the outstanding amounts to the loan balance, adding an escrow account for the loan, or purchasing property insurance on the consumer's behalf (with the statement that it is likely to be more expensive and provide fewer benefits than what the consumer could purchase directly).

Comments

The Bureau received a number of comments with respect to the disclosures that would have been required by proposed § 1026.38(l)(7). An individual consumer commenter suggested that the Bureau should remove the "Escrow Waiver Fee" in proposed § 1026.38(l)(7)(i)(B)(*2*) because the consumer believed that such fees should be prohibited. Another individual consumer commenter, in response to proposed illustrations of form H-25, suggested that the Bureau should require creditors to disclose the amount of homeowner's association fees a consumer is required to pay with each periodic payment. The commenter stated that as proposed, illustrations of form H-25 show only the total amount of such fees during the first year after consummation.

Some industry commenters asserted that they should be allowed to modify the disclosure requirements of proposed § 1026.38(l)(7). A national trade association representing timeshare developers and similar fractional interest real estate products stated that it did not believe the disclosures that would be required by § 1026.38(l)(7) applied to timeshare transactions because property taxes and insurance are usually included in the timeshare owner's annual maintenance fee instead of being escrowed. A State trade association representing bankers asserted creditors should be able to modify the disclosures that would have been required by § 1026.38(l)(7) such that if the disclosure were intended for a consumer who establishes an escrow account, creditors should not have to provide disclosures intended for a consumer who waived escrow, and vice versa. The trade association commenter asserted that providing information that is not applicable to a particular transaction could distract the consumer from important information that actually applies to the consumer's transaction. A community bank commenter urged the Bureau to eliminate or significantly reduce the proposed disclosures. The commenter asserted that the proposed escrow disclosures are generally unnecessary. The commenter asserted that in most cases, a consumer is already aware of the consumer's hazard insurance and property tax costs, the disclosure of non-escrowed property costs is not relevant to the loan transaction, and the proposed disclosures duplicated the proposed disclosures that would have been required by proposed § 1026.38(c) and (g)(3). Another community bank commenter asserted that a creditor should not have to disclose the statement that a consumer may contact the consumer's lender to ask if the consumer's loan can have an escrow account, which would have been required by proposed § 1026.38(l)(7)(i)(B)(*1*) if the creditor does not offer escrow accounts.

Other industry commenters sought to persuade the Bureau to clarify and modify various aspects of proposed § 1026.38(l)(7). Several national trade associations representing banks, mortgage bankers, and consumer mortgage companies appeared to suggest that industry stakeholders needed clarification from the Bureau with respect to how to count the first year after consummation in order to comply with the requirement to disclose the total amount for property costs that the consumer will be required to pay into an escrow account over the first year after consummation, as would have been required by proposed § 1026.38(l)(7)(i)(A)(*1*). A community bank commenter expressed similar concerns. Trade association commenters also asserted that the Bureau should not require creditors to list that the creditor does not require an escrow account as a reason for the non-establishment of an escrow account. They asserted that this explanation was encompassed within the proposed requirement to list that a consumer declined the escrow account as a reason for the non-establishment of an escrow account because a consumer could only decline an escrow account if the creditor did not require it. The trade association commenters further asserted that there should be a separate heading above the disclosure describing the consequences of the borrower failing to pay non-escrowed items required pursuant to proposed § 1026.38(l)(7)(ii)(C) because the "In the future" reference in proposed § 1026.38(l)(7)(ii) would be misleading due to the fact that the consumer may have non-escrowed items that are due very shortly after closing.

The trade association commenters, along with several bank commenters, sought clarification on how to comply with proposed § 1026.38(l)(7)(i)(B)(*2*),which would have required the creditor to disclose the amount of any fee the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, if the creditor does not charge a fee associated with the non-establishment of escrow, but reflects the cost of non-establishment through the provision of different loan terms, such as a higher interest rate. One such commenter, a community bank, suggested that the Bureau not adopt § 1026.38(l)(7)(i)(B)(*2*) because consumers pay for the escrow waiver fee through higher interest rates.

Several industry commenters, including a GSE commenter, a law firm commenter submitting comments on behalf of its document software company client, and a title company commenter, sought clarification on escrowed and non-escrowed property costs. The GSE commenter also suggested that the Bureau standardize the capitalization of the term "escrowed property costs" on final form H-25. It asserted that inconsistency in capitalization when referring to the same item could cause consumer confusion. On page 4 of proposed form H-25 of appendix H, "escrowed property costs" are shown capitalized to illustrate the disclosures that would have been required by proposed § 1026.38(l)(7), but the term is not shown capitalized on page 1 of proposed form H-25 to illustrate the disclosures that would have been required by proposed § 1026.38(c)(2).

One large bank commenter recommended that the Bureau change the proposed labels "Initial Payment" and "Monthly Payment" set forth in proposed § 1026.38(l)(i)(A)(*3*) and (*4*), respectively, to "Initial Escrow Payment" and "Monthly Escrow Payment," respectively, and remove the word "cushion" from the description of the initial escrow payment to avoid risking consumer confusion. The commenter also suggested that the final disclosures include a statement that would expressly state that the consumer's loan terms may not allow for escrow account cancellation because it is prohibited under certain loan programs. Further, the commenter suggested that the Bureau include a disclosure that informs the consumer that State law does not require an escrow account among the reasons why an escrow account will not be established. The commenter was concerned that without the disclaimer, a consumer who desires to establish an escrow account, but is not aware that establishment is prohibited under State law, could make unfounded claims against the creditor.

A document preparation company commenter shared the large bank commenter's concern about describing the initial escrow payment as a "cushion," as would have been required by proposed § 1026.38(l)(7)(i)(A)(*3*). The commenter also stated that the statements that would be required by proposed § 1026.38(l)(7)(i)(A) would be easier to understand if the statement that the creditor may be liable for penalties and interest if it fails to make a payment for an escrowed cost preceded the statement that the consumer would have to pay such costs directly in the absence of the escrow account. In proposed form H-25, the statement on the creditor's potential liability for failing to pay escrowed costs is shown immediately following the statement about a consumer's direct payment obligations absent an escrow account. The commenter did not provide any explanation for why the proposed sequencing of the statements is not clear or why the alternative sequencing it suggested would add greater clarity to the disclosures that would be required by proposed § 1026.38(l)(7)(i)(A).

One community bank commenter expressed concern that neither the model nor the sample Closing Disclosure forms provided an example where the consumer waived escrow. It asserted that creditors would need such an example to comply with proposed § 1026.38(l)(7)(i)(B)(*1*), which would have required the disclosure of the estimated total amount the consumer will pay directly for charges described during the first year after consummation that are known to the creditor, labeled as "Estimated Property Cost over Year 1."

One title company commenter asserted that the Bureau should not require a creditor to provide the statement that the consumer would have to pay for property costs directly absent an escrow account but did not explain its position. The commenter also asserted that the requirement to disclose the estimated amount the consumer is likely to pay during the first year after consummation labeled "Non-Escrowed Property Costs over Year 1," should be moved to the table titled "No Escrow" under proposed § 1026.38(l)(7)(i)(B) because disclosures about escrowed and non-escrowed costs should be segregated on the Closing Disclosure for clarity. The commenter further asserted that the Bureau must make clear that cancellation of a consumer's escrow account requires lender approval.

One bank employee commenter sought clarification on whether the creditor is required to disclose the amount of homeowner's association fees if the charge is not included in the consumer's escrow account. One mortgage broker commenter questioned why there is no disclosure that would inform a consumer about the amounts included in the cushion for the escrow account. Another commenter, self-identifying as an individual, suggested that the Bureau should define "escrow account" to improve consumer understanding.

Discussion

The Bureau has considered the comments and is addressing them below.

General requirements. With respect to the argument that creditors should be prohibited from imposing an escrow wavier fee, the Bureau believes such a prohibition would be outside the scope of this rulemaking. Accordingly, as long as some creditors assess the fee, it is important to inform consumers about the fee. Further, the Bureau has determined not to modify the disclosure requirements with respect to the disclosure of homeowner's association fees a consumer is required to pay with each periodic payment, because homeowner's association, condominium, or cooperative fees may not be due with every periodic payment. Adding this requirement may cause consumer confusion and be costly and burdensome to implement.

With respect to industry commenters' request that the Bureau permit creditors to modify the proposed disclosures if the creditor determines the disclosure does not enhance consumer understanding or is inapplicable to the creditor, the Bureau generally believes that permitting creditors to omit disclosures based on the creditors' own judgment that they are inapplicable or do not enhance consumer understanding risks undermining the consumer's understanding of the transaction. This would be inconsistent with the purpose of this rulemaking and the requirements of § 1026.38(t), for reasons discussed in greater detail in the section-by-section analyses to § 1026.19(e) and § 1026.38(t). With respect to comments about the applicability of the disclosures to timeshare plans, the Bureau believes whether an annual maintenance fee that includes assessments for property taxes and insurance may be an escrow account for purposes of § 1026.38(l)(7) would be a determination based on the particular facts and circumstances regarding the transaction. Comment 38(g)-5 adopted in this final rule also provides guidance on the definition of an escrow account, and the guidance applies to the determination of whether an escrow account has been established for purposes of § 1026.38(l)(7). Further, the Bureau acknowledges that the initial escrow payment and monthly payment disclosures that would have been required by proposed § 1026.38(l)(7)(i)(A)(*3*) and (*4*) reflect disclosures that would have been required by proposed § 1026.38(g)(3) and (c)(1), respectively. But TILA section 129D(h) requires the creditor to provide these disclosures in the Pre-Consummation Escrow Establishment Disclosure, and the Bureau believes that implementing these statutorily-required disclosures enhances consumer understanding of the escrow disclosure.

With respect to industry commenters that requested that the Bureau modify various aspects of the content that would have been required by proposed § 1026.38(l)(7), the Bureau has considered their suggestions and is making adjustments to the proposed disclosures to the extent the Bureau believes that these adjustments enhance consumer understanding, as described below. A number of comments the Bureau received on proposed § 1026.38(l)(7) sought clarifications on the content of the proposed disclosure or expressed compliance concerns, and the Bureau is responding to them separately below.

Content of proposed disclosures. The Bureau is adjusting the proposed labels "Initial Payment" and "Monthly Payment" set forth respectively in proposed § 1026.38(l)(i)(A)(*3*) and (*4*), to "Initial Escrow Payment" and "Monthly Escrow Payment," respectively. As noted by the commenter, adding the word "Escrow" may clarify the nature of the payment disclosed. The Bureau believes the adjustment would enhance consumer understanding. The Bureau has decided not to finalize the proposed requirement that creditors state that the creditor does not require an escrow account as a reason for the non-establishment of an escrow account. The Bureau believes that the explanation is encompassed within a related disclosure, for reasons provided by the commenters. The Bureau is not adding to the list of reasons that the creditor must disclose for escrow account non-establishment. As discussed above, one large bank commenter suggested that the Bureau include a disclosure that informs the consumer that State law does not require an escrow account as a reason why an escrow account will not be established. The Bureau believes that the State laws at issue, as described by the commenter, do not support the argument that certain State laws prohibit the establishment of escrow accounts. It appears that the laws only prohibit creditors from requiring the consumer to establish or keep an escrow account. It does not appear that the referenced laws prohibit a creditor from establishing an escrow account for a consumer at the consumer's request.

The Bureau does not believe any other adjustments or modifications to the content or format of the disclosure would enhance consumer understanding. The Bureau does not believe it is necessary to define "escrow account" further. As the proposed disclosure indicates, variations exist with respect to the term (*i.e.*, such accounts could also be called "impound" or "trust" accounts). Further, the Bureau believes that by the time that the consumer receives the disclosures that would have been required by § 1026.38(l)(7), the consumer would have become familiarized with the term and the purpose of such accounts by seeing the term, first disclosed in the Loan Estimate, and by going through the origination process. The Bureau also believes that the capitalization decision the Bureau made with respect to the term "escrowed property costs" is appropriate. On page 1 of form H-25, the term is part of a sentence. The Bureau believes that the absence of capitalization makes the sentence easier to read and comprehend. In contrast, on page 4, the term is capitalized because it is a label, and capitalization enhances prominence.

The Bureau believes that requiring creditors to use the term "cushion" for the disclosure required by § 1026.38(l)(7)(i)(A)(*3*) to describe the initial escrow payment is appropriate because the term enhances consumer understanding that the initial escrow payment may exceed a monthly payment's worth of escrowed charges. The Bureau also does not believe that further explanation is needed to inform consumers about the amounts included in the "cushion." This information is already disclosed pursuant to § 1026.38(g)(3), and the disclosure under § 1026.38(l)(7)(i)(A)(*3*) includes a cross-reference to that section.

The Bureau is also not persuaded that a statement that the consumer's loan terms may not allow for the cancellation of an escrow account is necessary. The Bureau believes that the disclosures proposed under the reference "In the future" state clearly that the consumer may not be able to cancel the consumer's escrow account. The Bureau also does not believe that the reference "In the future" could mislead consumers about their responsibilities to pay non-escrowed property costs. The disclosure that would have been required by proposed

§ 1026.38(l)(7)(i)(A)(*2*) clearly informs the consumer that the consumer should expect to have such costs due within the first year after consummation.

In response to a suggestion to move the disclosure about a consumer's non-escrowed property costs over the first year after consummation to the proposed "No Escrow" table, the Bureau does not believe that the disclosure belongs in the "No Escrow" table. The disclosure is appropriately placed under the "Escrow" table as proposed because it is a disclosure provided to a consumer that has established an escrow account and reflects the possibility that the consumer will have property costs that will not be paid using escrow account funds. The Bureau is also not adopting the suggestion that the Bureau withdraw the proposed requirement that the creditor provide the statement that the consumer would have to pay for property costs directly, absent an escrow account. The disclosure was proposed to implement a statutory requirement set forth in TILA section 129D(j), and the Bureau believes that it would enhance consumer understanding.

The Bureau has also considered the suggestion that the disclosure reflect that the consumer may only be able to cancel the consumer's escrow account with the creditor's consent. The Bureau believes that escrow account cancellation criteria could vary significantly, and the Bureau is concerned that adopting the suggestion to add certain specific criteria to the disclosure may confuse consumers, which would be inconsistent with the purpose of the integrated disclosures, which is to aid consumer understanding. Lastly, with respect to the suggestion that the Bureau re-sequence certain statements that would have been required by proposed § 1026.38(l)(7)(i)(A) as shown on proposed form H-25, the Bureau does not believe the adjustment would enhance consumer understanding. Additionally, consumer testing results indicated that the model disclosure performed well with consumers, and the commenter did not offer any explanation for why the proposed sequence is unclear. *See* Kleimann Quantitative

Testing Report, at 69-70.

Compliance questions. With respect to requests that the Bureau clarify how to count the first year after consummation to facilitate compliance with § 1026.38(l)(7)(i)(A)(*1*), the Bureau believes that it is unnecessary because the text of proposed § 1026.38(l)(7)(i)(A)(*1*), which the Bureau is adopting as proposed in this final rule, would have provided clear instructions on how to determine the consumer's escrowed property costs over the first year after consummation. Additionally, some commenters had questions with respect to how to determine what charges are "escrowed property costs" and what charges are "non-escrowed property costs." The Bureau believes that these questions are clearly addressed in proposed § 1026.38(l)(7)(i)(A)(*1*) and (*2*), respectively, which would have directed the creditor to § 1026.37(c)(4)(ii) to make the determination. With respect to whether the creditor is required to disclose the amount of homeowner's association fees if the charge is not included in the consumer's escrow account, § 1026.19(f)(1)(i) requires the creditor to disclose items on the Closing Disclosure that reflect the actual terms of the transaction. Additionally, proposed § 1026.38(l)(7)(i)(A)(*2*) would have required that the creditor disclose "non-escrowed property costs" over the first year after consummation, which would have included non-escrowed homeowner's association fees, to the extent that the consumer is likely to pay these costs over the first year after consummation and to the extent that they are known to the creditor. Accordingly, if, for example, the consumer's escrowed costs do not include homeowner's association fees, but the creditor knows that the consumer is likely to pay $1,000 in homeowner's association fees, then the creditor must disclose the fee as required by § 1026.38(l)(7)(i)(A)(*2*).

With respect to questions about how to disclose the Escrow Waiver Fee as required by § 1026.38(l)(7)(i)(B)(*2*) when the creditor does not impose a fee on the consumer for not establishing an escrow account in connection with the mortgage transaction, there would be no amount to disclose, and the disclosure would be left blank, as illustrated by form H-25 of appendix H to Regulation Z. Lastly, the Bureau recognizes that proposed form H-25 only provides illustrative examples of transactions where an escrow account has been established. However, the Bureau does not believe that an example illustrating a scenario in which the borrower has waived the escrow account is necessary to illustrate compliance with the proposed requirement to disclose estimated property costs over the first year after consummation, because, in that scenario, the calculation method is simple: all property costs described in § 1026.37(c)(4)(ii) are "non-escrowed property costs" if the consumer has waived the escrow account.

For the reasons stated above, the Bureau does not believe that it is necessary to make adjustments or modifications to proposed § 1026.38(l)(7) to address these concerns. But, as discussed above, the Bureau is making minor adjustments and modifications to the content and format of the disclosures in proposed § 1026.38(l)(7) as illustrated by form H-25 of appendix H to Regulation Z to enhance consumer understanding. The Bureau adopts § 1026.38(l)(7) and related commentary, with such adjustments and modifications, pursuant to its authority under section 105(a) of TILA, Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

Final Rule

Under the subheading "Escrow Account," § 1026.38(l)(7) requires the creditor to disclose whether the consumer's loan will have an escrow account, and certain details about the payments made using escrow account funds and those the consumer must make directly. Under the "Escrow Account" subheading and under the reference "For now," § 1026.38(l)(7)(i) requires a statement that an escrow account may also be called an “impound” or “trust” account and a statement of whether the creditor has or will establish an escrow account at or before consummation in connection with the transaction for the costs that will be paid using escrow account funds described in § 1026.38(l)(7)(i)(A). Section 1026.38(l)(7)(i)(A) requires the following disclosures under the “For now” reference: (1) a statement that the creditor may be liable for penalties and interest if it fails to make a payment for any costs for which the escrow account has been established, (2) a statement that the consumer would be required to pay such costs directly if no account is established, and (3) a table titled “Escrow” that contains, if an escrow account is or will be established, an itemization of the following: (i) the total amount the consumer will be required to pay into an escrow account over the first year after consummation for payment of the charges referenced in § 1026.37(c)(4)(ii), labeled “Escrowed Property Costs over Year 1,” together with a descriptive name for each such charge, calculated as the amount disclosed under § 1026.38(l)(7)(i)(A)(*4*) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation; (ii) the estimated amount the consumer is likely to pay during the first year after consummation for charges described in § 1026.37(c)(4)(ii) that are known to the creditor and that will not be paid using escrow account funds, labeled “Non-Escrowed Property Costs over Year 1,” together with a descriptive name for each such charge and a statement that the consumer may have to pay other costs that are not listed; (iii) the total amount disclosed pursuant to § 1026.38(g)(3), a statement that the payment is a cushion for the escrow account, labeled “Initial Escrow Payment,” and a reference to the information disclosed pursuant to § 1026.38(g)(3); and (iv) the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation for payment of the charges described in § 1026.37(c)(4)(ii), labeled “Monthly Escrow Payment.” As discussed above, the labels “Initial Escrow Payment” and “Monthly Escrow Payment” reflect adjustments the Bureau has made in response to comments.

Section 1026.38(l)(7)(i)(A)(*5*) provides that a creditor complies with the requirements of § 1026.38(l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17. Comments 38(l)(7)(i)(A)(*2*)-1 and 38(l)(7)(i)(A)(*4*)-1 are adopted as proposed and set forth guidance with respect to the calculation of the itemized amounts that are required to be disclosed pursuant to § 1026.38(l)(7)(i)(A).

Section 1026.38(l)(7)(i)(B) requires a statement of whether the loan will not have an escrow account and the reason the loan will not have an escrow account. For example, if the loan will not have an escrow account because either the consumer declined to have one or the creditor does not offer them, the disclosure must state that fact. The finalized statement is different from the proposed statement because, as discussed above, commenters observed that a consumer could only decline an escrow account if the creditor did not require it. The Bureau is persuaded that it is unnecessary to require creditors to list “the creditor does not require an escrow account” as separate reason for why the loan will not have an escrow account.

Section 1026.38(l)(7)(i)(B) also requires a statement that the consumer must pay all property costs, such as taxes and homeowner’s insurance, directly, as well as a statement that the consumer may contact the creditor to inquire about the availability of an escrow account. Finally, § 1026.38(l)(7)(i)(B) requires a table titled “No Escrow,” that contains, if an escrow account will not be established, an itemization of the following: (1) the estimated total amount the consumer will pay directly for charges described in § 1026.37(c)(4)(ii) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled as “Estimated Property Costs over Year 1,” and (2) the amount of any fee that the creditor may impose for not establishing an escrow account, labeled “Escrow Waiver Fee.” The disclosures required by § 1026.38(l)(7)(i)(B) are under the “For now” reference that is required by § 1026.38(l)(7)(i). Comment 38(l)(7)(i)(B)(*1*)-1 is adopted as proposed and provides guidance with respect to the calculation of the amounts that are required to be disclosed pursuant to § 1026.38(l)(7)(i)(B).

Under the subheading “Escrow Account,” required by § 1026.38(l)(7) and under the reference “In the future,” § 1026.38(l)(7)(ii) requires information about future requirements for property costs. Specifically, § 1026.38(l)(7)(ii)(A) requires a statement that the consumer’s property costs may change and, as a result, the consumer’s escrow amount may change. Section 1026.38(l)(7)(ii)(B) requires a statement that the consumer may be able to cancel an established escrow account, but if the account is cancelled the consumer would be required to pay those costs directly unless a new escrow account is established.

Section 1026.38(l)(7)(ii)(C) requires a description of the consequences of failing to pay the property costs, including the imposition of fines and penalties or imposition of a tax lien by the consumer’s State and local government, and possible actions by the creditor, such as adding the outstanding amounts to the loan balance, adding an escrow account for the loan, or purchasing property insurance on the consumer’s behalf (with the statement that it is likely to be more expensive and provide fewer benefits than what the consumer could purchase directly).

Legal authority. The Bureau believes that requiring disclosures regarding the establishment of an escrow account, as well as the non-establishment of an escrow account, will provide consumers with information needed to evaluate the costs and fees associated with mortgage loans and to understand their ongoing monthly obligations regardless of whether the transaction would include an escrow account. Disclosure of this information will ensure that consumers have the facts needed to understand a key requirement of their mortgage loan and avoid the uninformed use of credit, consistent with the purposes of TILA. In addition, the Bureau believes that the disclosures adopted in this final rule will ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(m) Adjustable Payment Table

For transactions subject to proposed § 1026.19(f), the Bureau proposed § 1026.38(m) pursuant to TILA section 128(b)(2)(C)(ii), its implementation authority under TILA section 105(a), and its authority under section 1032(a) of the Dodd-Frank Act and RESPA section 19(a). Proposed § 1026.38(m) would have required creditors to disclose on the Closing Disclosure the Adjustable Payment table required by § 1026.37(i) if, under the terms of the legal obligation, the principal and interest payment may adjust without a corresponding adjustment to the interest rate or if the loan is a seasonal payment product under § 1026.38(a)(5)(iii). The information required to be disclosed in the table would have included: the periodic payment at the first adjustment of the payment; the number of the earliest number payment that could reflect an adjustment to the amount of the periodic payment; the maximum possible principal and interest payment; the number of the earliest payment that could reflect the maximum possible periodic payment; an affirmative or negative statement of whether the loan has an interest only, payment-option, step-payment period, or seasonal payment period; and the length of such a period and the payments affected.

The requirements of proposed § 1026.38(m) would have mirrored those of proposed § 1026.37(i). Accordingly, proposed comment 38(m)-1 would have directed creditors to the commentary to proposed § 1026.37(i) for guidance on the disclosures required by proposed § 1026.38(m). Proposed comment 38(m)-2 would have clarified that, although the disclosure required by proposed § 1026.38(m) is to be presented under a different master heading than the disclosure required by proposed § 1026.37(i), the other requirements applicable to proposed § 1026.37(i) apply to proposed § 1026.38(m). Proposed comment 38(m)-3 would have clarified that the prohibition against presenting the table required by proposed § 1026.37(i) except if the conditions of that paragraph are satisfied applies to proposed § 1026.38(m). Proposed comment 38(m)-4 would have clarified that the final terms that will apply to the credit transaction must be disclosed pursuant to proposed § 1026.38(m).

Comments received related to the AP table are discussed in the section-by-section analysis of § 1026.37(i). The Bureau did not receive any comments specifically related to proposed § 1026.38(m) or its related commentary that were not discussed with respect to § 1026.37(i). Accordingly, the Bureau is adopting § 1026.38(m) and comments 38(m)-1 and -2 as proposed. The Bureau is adopting comments 38(m)-3 and -4 substantially as proposed but with minor modifications for clarity. For a detailed description of the Bureau's implementation of TILA section 128(b)(2)(C)(ii) and use of its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and RESPA section 19(a), see the section-by-section analysis of

§ 1026.37(i).

38(n) Adjustable Interest Rate Table

For transactions subject to § 1026.19(f), proposed § 1026.38(n) would have used the implementation authority of TILA section 105(a) and the authority of Dodd-Frank Act section 1032(a) and RESPA section 19(a) to require creditors to disclose on the Closing Disclosure the Adjustable Interest Rate table required by § 1026.37(j) if, under the final terms of the legal obligation, the interest rate may adjust after consummation. The information required to be disclosed in the table as proposed would have included: (i) the index and margin for an adjustable rate loan for which the interest rate will adjust according to an index that is beyond the control of the creditor; (ii) for a loan with an interest rate that changes based on something other than such an index, such as a "step-rate" product, the amount of the scheduled adjustments and their frequency; (iii) the interest rate at consummation; (iv) the minimum and maximum possible interest rates after consummation of the loan, after any introductory or teaser rate expires; (v) the maximum possible change in the interest rate at the first adjustment; (vi) the maximum possible change for subsequent adjustments of the interest rate; (vii) the month after consummation when the interest rate may first change, counted from the date that interest begins to accrue for the first periodic principal and interest payment; and (viii) the frequency of subsequent interest rate adjustments after consummation. The requirements of proposed § 1026.38(n) would have mirrored those of proposed § 1026.37(j). Accordingly, proposed comment 38(n)-1 would have directed creditors to the commentary to proposed § 1026.37(j) for guidance on the disclosures required by proposed § 1026.38(n). Proposed comment 38(n)-4 would have clarified that, although the disclosure required pursuant to proposed § 1026.38(n) is to be presented under a different master heading than the disclosure required by § 1026.37(j), the other requirements applicable to § 1026.37(j) apply to proposed § 1026.38(n). Proposed comment 38(n)-3 would have clarified that the prohibition against presenting the table required by § 1026.37(j) if the interest rate will not change after consummation applies to proposed § 1026.38(n). Proposed comment 38(n)-4 would have clarified that the final terms that will apply to the credit transaction must be disclosed pursuant to proposed § 1026.38(n).

Comments received related to the AIR table are discussed in the section-by-section analysis of § 1026.37(j). The Bureau did not receive any comments specifically related to proposed § 1026.38(n) or its accompanying commentary that were not discussed with respect to § 1026.37(j). Accordingly, the Bureau is adopting § 1026.38(n) and comments 38(n)-1 and -2 as proposed. The Bureau is adopting comments 38(n)-3 and -4 substantially as proposed but with minor modifications for clarity.

For a detailed description of the Bureau's implementation of these rules and use of TILA section 105(a), Dodd-Frank Act section 1032(a), and RESPA section 19(a) authority, see the section-by-section analysis of § 1026.37(j) above.

38(o) Loan Calculations

Proposed § 1026.38(o) would have required creditors to disclose in a separate table under the heading "Loan Calculations," certain information required by TILA section 128(a)(2) through (5), (8), (17), and (19). Specifically, the table required by proposed § 1026.38(o) would have needed to contain the total of payments, finance charge, amount financed, annual percentage rate, total interest percentage, and the approximate cost of funds disclosures described in proposed § 1026.38(o)(1) through (6). Pursuant to proposed § 1026.38(t) and form H-25, the table required by proposed § 1026.38(o) would have appeared on the final page of the Closing Disclosure, apart from key loan terms identified on the first page of the Closing Disclosure. The

Bureau observed in the proposal that, based on research regarding consumer comprehension and behavior and the results of the Bureau's consumer testing, the Bureau believed that the disclosure of these calculations on the final page of the Closing Disclosure and apart from key loan terms may reduce information overload and enhance the overall understanding of the Closing Disclosure.

The Bureau further observed that research suggests that consumers can process only a finite amount of information when making complex decisions. As a result, an effective disclosure regime minimizes the risk of distraction and overload by emphasizing information that is important to consumer comprehension, while placing less emphasis on disclosures that are less useful to consumers. The Bureau noted that consumer testing conducted by the Bureau for purposes of developing the Closing Disclosure and by the Board for purposes of its 2009 Closed-End Proposal indicates that consumer understanding is enhanced if the loan calculations in proposed § 1026.38(o) are disclosed together and less prominently than disclosures that are most important to consumers' understanding of their mortgage transactions, such as interest rate and monthly payment. *See* Kleimann Testing Report at 297-304; 74 FR 43293-98, 43306-09.

The Bureau solicited comment on whether the disclosures in proposed § 1026.38(o) would enhance consumers' ability to understand their loan transactions or serve other important purposes and, if not, whether the Bureau should use its authority under TILA section 105(a) and (f) and Dodd-Frank Act sections 1032(a) and 1405(b) to exempt transactions subject to § 1026.19(f) from certain of these requirements.

38(o)(1) Total of Payments

TILA section 128(a)(5) and (8) requires creditors to disclose the sum of the amount financed and the finance charge using the term "Total of Payments," and a descriptive explanation of that term. 15 U.S.C. 1638(a)(5), (8). Current § 1026.18(h) implements these statutory provisions by requiring creditors to disclose the "total of payments," using that term, and a descriptive explanation that the figure represents the amount the consumer will have paid after making all scheduled payments. Current comment 18(h)-2 provides that creditors must calculate the total of payments amount for transactions subject to § 1026.18(s) using the rules in § 1026.18(g) and associated commentary and, for adjustable rate transactions, comments 17(c)(1)-8 and -10. Current comment 18(g)-1 provides guidance to creditors on the amounts to be included in the total of payments calculation. Current comment 18(h)-1 allows creditors to revise the total of payments descriptive statement for variable-rate transactions to convey that the disclosed amount is based on the annual percentage rate and may change. In addition, current comments 18(h)-3 and -4 permit creditors to omit the total of payments disclosure in certain single-payment transactions and for demand obligations that have no alternate maturity rate.

The Bureau's Proposal

Proposed § 1026.38(o)(1) would have implemented the requirements of TILA section 128(a)(5) and (8) for transactions subject to proposed § 1026.19(f), pursuant to the Bureau's implementation authority under TILA section 105(a). Specifically, proposed § 1026.38(o)(1) would have required creditors to disclose on the Closing Disclosure the term "Total of Payments," and the statement that the disclosure is "the total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled." For the reasons set forth in the section-by-section analysis of § 1026.37(l)(1)(i), the Bureau proposed to modify the requirement of TILA section 128(a)(5) that the total of payments disclose the sum of the amount financed and the finance charge. Research has shown that consumers misunderstand the total of payments disclosure under current rules and do not use it when evaluating loan offers.

Thus, the Bureau proposed to modify the current rules and include in the total of payments calculation principal, interest, mortgage insurance (including any prepaid or escrowed mortgage insurance), and loan costs disclosed pursuant to proposed § 1026.37(f). Proposed comment 38(o)(1)-1 would have clarified that, for purposes of § 1026.18(o)(1), the total of payments is calculated in the same manner as the “In 5 Years” disclosure pursuant to § 1026.37(l)(1)(i), except that the disclosed amount reflects the total payments through the end of the loan term. The comment also would have referred creditors to comment 37(1)(1)(i)-1 for guidance on the amounts included in the total of payments calculation.

Comments

The Bureau received very few comments on the disclosure of the total of payments calculation in the Closing Disclosure. One consumer commenter supported the inclusion of the total of payments calculation on the Closing Disclosure. Two industry trade association commenters requested additional guidance on how to calculate this particular disclosure. An industry commenter sought clarification as to whether hard-coded text is required on this disclosure or if the text can change, and if the latter, sought acceptable verbiage that could be used.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(o)(1) and comment 38(o)(1)-1 as proposed. As discussed in the section-by-section analysis of § 1026.37(l) and noted above, the Bureau has decided to modify the total of payments disclosure to reflect the total payments over five years, rather than the life of the loan, on the Loan Estimate provided to consumers near the time of application. The Bureau determined based upon research and consumer testing that the "In 5 Years" disclosure is beneficial to consumers in comparing loans they are considering, and that it is a more accessible time period for consumers than the life of the loan (typically 30 years). Notwithstanding concerns about the utility of the total of payments disclosure on the Loan Estimate, the Bureau recognizes that the total of payments disclosure offers some important benefits on the Closing Disclosure. The Closing Disclosure is different than the Loan Estimate; although a five-year metric is appropriate for the Loan Estimate, a metric showing the total of payments for the full term is more appropriate for the Closing Disclosure. The total of payments disclosure is commonly used by creditors and supervisory agencies for compliance purposes, as well as by consumer advocates. In addition, consumer testing indicates that consumer participants used the total of payments calculation and it helped increase their understanding of loan costs. During the Bureau's consumer testing, both experienced and inexperienced consumer participants often commented on the total amount and saw it as an important piece of information that would assist them in evaluating a loan. *See* Kleimann Testing Report at 252.

For the reasons set forth in the section-by-section analysis of § 1026.37(l)(1)(i) – to improve consumer understanding of the meaning of the total of payments calculation and clarify its importance in the decision-making process – the Bureau is modifying the requirement of TILA section 128(a)(5) that the total of payments disclose the sum of the amount financed and the finance charge. Instead, the Bureau has decided to include in the total of payments calculation principal, interest, mortgage insurance (including any prepaid or escrowed mortgage insurance), and loan costs disclosed pursuant to § 1026.37(f). The Bureau is making this modification pursuant to TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). By focusing on amounts that are more likely to be understood and used by consumers, unlike the regulatory amounts of the finance charge and the amount financed, the Bureau believes that the total of payments disclosure will give consumers a way of measuring the cost of the loan with more readily understandable information, which is one of the purposes of the integrated disclosures. Dodd-Frank Act sections 1098 and 1100A. The Bureau believes that this modification will enhance consumer understanding of mortgage transactions because including loan costs, rather than the finance charge, in the total of payments calculation will allow consumers to identify the costs that are included in the total of payments calculation. Consumers can refer to other parts of the Closing Disclosure to determine which loan costs are included in the total of payments disclosure, in contrast to the components of the finance charge, which the consumer has no way to identify. Further, the Bureau believes that including the same costs and fees in the total of payments disclosure as are in the "In 5 Years" disclosure pursuant to § 1026.37(l)(1)(i) will ease compliance burden for creditors. The Bureau believes this modification will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). In addition, the Bureau believes that the disclosure ensures that the features of consumer credit transactions secured by real property 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, consistent with Dodd-Frank Act section 1032(a).

With respect to the comments seeking additional guidance in calculating the total of payments disclosure, comment 38(o)(1)-1 clarifies that, for purposes of § 1026.38(o)(1), the total of payments is calculated in the same manner as the "In 5 Years" disclosure pursuant to § 1026.37(l)(1)(i), except that the disclosed amount reflects the total payments through the end of the loan term. As discussed above, the Bureau also believes that including the same costs and fees in the total of payments disclosure as are in the “In 5 Years” disclosure pursuant to § 1026.37(l)(1)(i) will ease compliance burden for creditors.

Section 1026.38(o)(1) requires creditors to disclose on the Closing Disclosure the term “Total of Payments,” and the statement that the disclosure is the “total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.”

The final rule does not allow creditors to modify the descriptive statement that accompanies the total of payments disclosure for variable-rate transactions or to omit the total of payments disclosure in single-payment transactions and for demand obligations that have no alternate maturity rate, in contrast to current comments 18(h)-1, -3, and -4. The Bureau believes that consistent disclosures will better enhance consumer understanding of credit terms and will ease compliance burden for creditors.

38(o)(2) Finance Charge

TILA section 128(a)(3) and (8) requires creditors to disclose the “finance charge” and a brief descriptive statement of the finance charge. 15 U.S.C. 1638(a)(3), (8). Current § 1026.18(d) implements these provisions by requiring creditors to disclose the “finance charge,” and a brief description such as “the dollar amount the credit will cost you.” Current comment 18(d)-1 allows creditors to modify the descriptive statement for variable rate transactions with a phrase indicating that the disclosed amount is subject to change. In addition, current § 1026.17(a)(2), which implements TILA section 122(a), requires creditors to disclose the finance charge (along with the APR) more conspicuously than any other required disclosure, except the creditor’s identity. The rules addressing which charges must be included in the finance charge are set forth in TILA section 106, and are discussed more fully above with respect to § 1026.4.

The Bureau's Proposal

Proposed § 1026.38(o)(2) would have implemented TILA section 128(a)(3) and (8) for transactions subject to § 1026.19(f), pursuant to the Bureau's implementation authority under TILA section 105(a). Proposed § 1026.38(o)(2) would have required creditors to disclose the finance charge, using that term, and the descriptive statement "the dollar amount the loan will cost you," in the table required by proposed § 1026.38(o). Proposed comments 38(o)(2)-1 and -2 would have provided guidance to creditors on how to disclose and calculate the finance charge. The proposed rule would not have allowed creditors to modify the descriptive statement that accompanies the finance charge disclosure for variable-rate transactions, in contrast to current comment 18(d)-1, because the Bureau believed that consistent disclosures will better enhance consumer understanding of credit terms and will ease compliance burden for creditors. Proposed § 1026.38(o)(2) also would have provided that the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge is understated by no more than $100 or is greater than the amount required to be disclosed. However, the Bureau solicited comment on whether and the amount by which this tolerance should be raised in light of the proposed expanded definition of the finance charge for closed-end transactions secured by real property or a dwelling. The Bureau proposed to exercise its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to except transactions subject to proposed § 1026.19(f) from the requirement under TILA section 122(a) that the finance charge be disclosed more conspicuously than other disclosures.

Comments

The Bureau received very few comments on this aspect of the proposal. One industry commenter argued that if the Bureau adopts an “all-in” APR, the current $100 tolerance for the finance charge should be adjusted for inflation. One industry commenter was confused as to from where the Finance Charge numbers originate. Another industry commenter sought clarification as to whether hard-coded text is required for this disclosure or if the text can change, and if the latter, sought acceptable verbiage that could be used. One law firm commenter argued that the “Finance Charge” disclosure should be moved to a more prominent part of the Closing Disclosure.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(o)(2) and comments 38(o)(2)-1 and 38(o)(2)-2 as proposed. Section 1026.38(o)(2) requires creditors to disclose the finance charge, using that term, and the descriptive statement “the dollar amount the loan will cost you.” The Bureau is exercising its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to except transactions subject to § 1026.19(f) from the requirement under TILA section 122(a) that the finance charge be disclosed more conspicuously than other disclosures. The Bureau has considered the purposes for which it may exercise its authority under TILA section 105(a) and, based on that review, believes that the exception is appropriate.

Here, the exception from the TILA section 122(a) requirement that the finance charge be more conspicuously disclosed than other disclosures effectuates TILA’s purpose of achieving a meaningful disclosure of credit terms for transactions subject to § 1026.19(f). As discussed in the section-by-section analysis of § 1026.37(l), consumers generally do not understand the finance charge and do not use it when making decisions about their loan. With respect to the comment that the finance charge be disclosed in a more prominent place on the Closing Disclosure, the Bureau believes that consumer understanding is enhanced by disclosing the finance charge with other loan calculations, such as total of payments, amount financed, and total interest percentage, for transactions subject to § 1026.19(f), and that a more prominent disclosure of the finance charge may not provide a meaningful benefit to consumers. Rather, disclosure of the finance charge separately from the information that is important to consumer understanding of credit terms may enhance consumer understanding by avoiding information overload. Although concerns regarding consumer distraction and information overload persist at the stage of the transaction where the consumer receives the Closing Disclosure, the Bureau believes that disclosing the finance charge with other loan calculations on the final page of the Closing Disclosure as a general reference for the consumer after closing will mitigate these concerns.

The Bureau also recognizes that creditors, consumer advocates, and State and Federal supervisory agencies use the finance charge when calculating or verifying the calculation of the APR, determining compliance with certain price thresholds, and for a range of other purposes, including the right of rescission pursuant to TILA section 125. 15 U.S.C. 1635. Accordingly, to preserve the finance charge disclosure for these purposes, the Bureau is requiring creditors to disclose the finance charge on the Closing Disclosure provided to consumers at least three days prior to consummation.

The Bureau also is adopting this exemption pursuant to its authority under TILA section 105(f). 15 U.S.C. 1604(f)(1). The Bureau has considered the factors in TILA section 105(f) and has determined that, for the reasons discussed above, an exemption is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Highlighting the finance charge on the disclosure form contributes to overall consumer confusion and information overload, complicates the mortgage lending process, and hinders consumers' ability to understand important loan terms. For these same reasons, the Bureau has determined that the disclosure of the finance charge would ensure that the features of consumer credit transactions secured by real property 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, consistent with section 1032(a) of the Dodd-Frank Act, and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

One industry commenter was confused as to from where the Finance Charge numbers originate, but the Bureau notes that comment 38(o)(2)-1 clarifies that the finance charge is calculated in accordance with the requirements of § 1026.4 and its commentary. One industry commenter argued that if the Bureau adopts the expanded definition of the finance charge the Bureau also proposed in the TILA-RESPA Proposal, then the current $100 tolerance for the finance charge should be adjusted for inflation. The Bureau notes that this concern is moot because the Bureau has decided not to adopt an expanded definition of the finance charge at this time. See the section-by-section analysis of § 1026.4, above.

38(o)(3) Amount Financed

TILA section 128(a)(2) and (8) requires creditors to disclose the “amount financed,” using that term, and a brief descriptive statement. 15 U.S.C. 1638(a)(2), (8). Current § 1026.18(b) implements this provision by requiring creditors to disclose the amount financed, using that term, together with a brief description that the amount financed represents the amount of credit of which the consumer has actual use.

The Bureau’s Proposal

The Bureau proposed new § 1026.38(o)(3) to implement TILA section 128(a)(2) and (8) for transactions subject to proposed § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). Proposed § 1026.38(o)(3) would have required creditors to disclose the amount financed, using that term, together with the descriptive statement, “the loan amount available after paying your upfront finance charge.” Proposed comment 38(o)(3)-1 would have clarified that, for purposes of § 1026.38(o)(3), the amount financed disclosure is calculated in accordance with the requirements of § 1026.18(b) and its commentary.

Comments

In response to the proposal, several consumer advocacy group and industry trade association commenters argued that the “Amount Financed” disclosure should be eliminated because it is confusing to consumers and since it serves no useful purpose to the consumer as the loan amount is now included in the Closing Disclosure. These commenters contended that even though this disclosure is mandated by the Dodd-Frank Act, the Bureau should exercise its exception and modification authority to eliminate it, consistent with avoiding consumer confusion and information overload. One law firm commenter argued that the “Amount

Financed” disclosure should be moved to a more prominent part of the Closing Disclosure.

An industry commenter suggested that the Bureau describe the “Amount Financed” disclosure as the loan amount reduced by the prepaid finance charge. This commenter also suggested that the Bureau explain that the prepaid finance charge entails the closing costs associated with getting a mortgage loan rather than paying cash. An industry commenter sought clarification as to whether hard-coded text is required for this disclosure or if the text can change, and if the latter, sought acceptable verbiage that could be used.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(o)(3) and comment 38(o)(3)-1 as proposed. Although research shows that many consumers do not fully understand the amount financed, the “Amount Financed” is an existing Regulation Z disclosure used to calculate the APR and helps facilitate compliance. The Bureau believes that requiring creditors to disclose the amount financed, using that term, together with the descriptive statement, “the loan amount available after paying your upfront finance charge,” is appropriate to serve TILA’s purpose of assuring a meaningful disclosure of credit terms. Comment 38(o)(3)-1 clarifies that the amount financed is calculated in accordance with the requirements of § 1026.18(b) and its commentary.

With respect to the comment that the amount financed be disclosed more prominently on the Closing Disclosure, the Bureau believes that consumer understanding is enhanced by disclosing the amount financed with other loan calculations, such as total of payments, finance charge, and total interest percentage, for transactions subject to § 1026.19(f), and that a more prominent disclosure of the amount financed may not provide a meaningful benefit to consumers. Rather, disclosure of the amount financed separately from the information that is important to consumer understanding of credit terms may enhance consumer understanding by avoiding information overload. Although concerns regarding consumer distraction and information overload persist at the stage of the transaction where the consumer receives the Closing Disclosure, the Bureau believes that disclosing the amount financed with other loan calculations on the final page of the Closing Disclosure as a general reference for the consumer after closing will mitigate these concerns.

Accordingly, the Bureau believes that the disclosure of the amount financed would ensure that the features of consumer credit transactions secured by real property 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, consistent with 1032(a) of the Dodd-Frank Act, and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(o)(4) Annual Percentage Rate

TILA section 128(a)(4) and (8) requires creditors to disclose the annual percentage rate, together with a brief descriptive statement. 15 U.S.C. 1638(a)(4), (8). Current § 1026.18(e) implements this requirement by requiring creditors to disclose the "annual percentage rate," using that term, and a brief description such as "the cost of your credit as a yearly rate." 15 U.S.C. 1632(a). In addition, TILA section 122(a) requires that the annual percentage rate be more conspicuous than other disclosures, except the disclosure of the creditor's identity. This requirement is implemented in current § 1026.18(e).

The Bureau's Proposal

Proposed § 1026.38(o)(4) would have implemented the requirements of TILA section

128(a)(4) and (8) for transactions subject to § 1026.19(f) by requiring creditors to disclose the "annual percentage rate" and the abbreviation "APR," together with the following statement: "Your costs over the loan term expressed as a rate. This is not your interest rate." The Bureau also proposed to exercise its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to except the annual percentage rate from the conspicuous disclosure requirement under TILA section 122(a), for transactions subject to proposed § 1026.19(f).

Comments

In response to the proposal, the Bureau received several comments arguing that the Bureau should eliminate the APR from the Closing Disclosure since it is confusing, of little value to consumers, and because consumers do not understand it. These commenters contended that the Bureau's own research has found that the APR is confusing to consumers, and requires clarification through accompanying narrative. As discussed in the section-by-section analysis of § 1026.37(l)(2), an industry trade association commenter, a consumer advocacy group commenter, and a law firm commenter argued that the Bureau should use its authority under TILA sections 105(a) and (f) to exempt all residential mortgage loans from the disclosure requirements of the APR.

A trade association commenter argued that, in the credit card context, the Board's 2009 credit card rulemaking eliminated the all-in APR for credit card statements after its quantitative consumer testing found that most consumers did not understand the all-in APR and that for some, it distracted from the effectiveness of other disclosures.

A GSE, an industry commenter, and a consumer advocacy group commenter suggested that the Bureau formulate a better explanation of the APR than the one proposed, as a clearer one will help consumers understand that APR is not just the interest rate but also the related cost of credit since creditors consistently fail to understand and correctly explain the difference between the interest rate and the APR. One consumer advocacy commenter argued that the APR is not useful for an adjustable rate loan, and several industry commenters suggested that the Bureau provide additional clarity in terms of how to calculate the APR for adjustable rate mortgage loans. An industry commenter sought clarification as to whether hard-coded text is required for this disclosure or if the text can change, and if the latter, sought acceptable verbiage that could be used.

Several industry trade association commenters favored the inclusion of the APR and disfavored making any changes to how this disclosure is calculated. A consumer commenter supported the APR disclosure but suggested disclosing it as two separate items, as with credit cards: (1) APR; and (2) all other fees. One industry commenter suggested that the finance charges used to calculate the APR should be disclosed appropriately to help consumers understand what charges are included in the APR. An industry commenter argued that the APR disclosure should include analysis of the cost-recovery period so that consumers could see that a lower APR is going to save them money over the long term. An industry commenter disfavored the placement of the APR disclosure on page 5 of the Closing Disclosure, and recommended that the Bureau provide a descriptive reminder about what the interest rate is in order to reduce consumer confusion.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(o)(4) as proposed. The Bureau notes that the APR is a long-standing measure designed to provide consumers a way of measuring the total cost of credit and comparing loan products. As discussed above in the section-by-section analysis of § 1026.37(l)(2), consumer testing conducted by the Board and the Bureau, and comments received by the Bureau, consistently indicate consumer confusion over the APR. When the Bureau added the statement "this is not your interest rate" to the descriptive explanation of the APR during its consumer testing, although confusion was reduced, participants still did not understand how to use the APR. Instead, participants used measures they readily understood, such as the maximum interest rates, maximum periodic payments, and closing cost details to evaluate, compare, and verify loan terms. Participants were able to use these measures to evaluate and compare loans, making sophisticated trade-offs, often based on rationales involving their personal circumstances. *See* Kleimann Testing Report at 303-304.

In light of these comments concerning consumer confusion over the APR and the fact that consumers do not appear to use the APR in comparing loan offers, the Bureau is exercising its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to except transactions subject to § 1026.19(e) from the requirement of TILA section 122(a) that the annual percentage rate disclosure be more conspicuous than other disclosures, except the disclosure of the creditor's identity. The Bureau believes that the exemption will enhance consumer understanding by separating the APR disclosure from the interest rate disclosure, which could prevent consumer confusion over the two rates and reduce the possibility of information overload for consumers attempting to compare loan terms, consistent with the purposes of TILA. In addition, the purpose of the integrated disclosure under TILA section 105(b) and RESPA section 4(a) is to "aid the borrower…in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures." The Bureau believes that placing measures that are readily understandable to consumers on the first page of the Closing Disclosure, and complex measures that consumers find confusing on latter pages, meets this statutory objective.

The Bureau also has considered the factors in TILA section 105(f) and has determined that an exception is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. As discussed above in part II.D and in the section-by-section analysis of § 1026.37(l)(2), consumer testing and historical research indicate that consumers do not understand the APR and do not use it when shopping for a loan. Highlighting the APR on the disclosure form contributes to overall consumer confusion and information overload, complicates the mortgage lending process, and hinders consumers' ability to understand important loan terms. As such, the Bureau has determined that an exemption from the requirement that the APR be disclosed more conspicuously than other disclosures will not undermine the goal of consumer protection but, instead, will improve consumer understanding of the loans. For all these reasons, the Bureau has determined that the APR disclosure will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b), and that, consistent with section 1032(a) of the Dodd-Frank Act, the disclosure would ensure that the features of consumer credit transactions secured by real property 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.

As discussed in the section-by-section analysis of § 1026.37(l)(2), in response to the Bureau's Small Business Review Panel Outline and in comments on the proposal, some consumer advocacy groups expressed concern about disclosing the APR on the final page of the Loan Estimate and Closing Disclosure and suggested that the APR should be more prominently displayed on the disclosures. Specifically, this feedback stated that the APR is a widely recognized disclosure that is a useful tool for consumers in comparing and understanding mortgage loans, and that deemphasizing the APR is not the most effective way of dealing with known problems with the APR disclosure. Instead, these groups suggested that the APR disclosure could be improved through an expanded definition of the finance charge, better descriptive language of the APR, or by supplementing the APR with other disclosures. The Bureau has considered this feedback, but for the reasons discussed above, believes that the approach to the APR adopted in the final rule could provide important benefits to consumers by emphasizing the difference between the APR and the contract interest rate and by deemphasizing historically confusing disclosures that contribute to information overload, and that other possible approaches to improving the APR would be less effective at improving the disclosure. The Bureau also intends to develop supplemental educational materials in booklets and its website that will further explain how the APR differs from the interest rate, how it provides a good way of comparing the entire costs of the loan over the entire term, and why consumers may want to use the APR figures to think about their financial futures.

As discussed above, several commenters were confused about how to calculate the APR for adjustable rate mortgage loans. A consumer advocacy group commenter suggested disclosing the APR as two separate items, similar to what is done for credit cards: (1) APR; and

(2) all other fees. Several commenters suggested that the Bureau formulate a better explanation of the APR than the one proposed. At least one industry participant in the Bureau's consumer testing of the prototype disclosures suggested that the form show the calculation for the APR. The Bureau notes, however, that TILA section 128(a)(4) and (8) requires creditors to disclose the APR, together with a brief descriptive statement of the APR, and the Dodd-Frank Act did not change the calculation of APR for integrated disclosures. The Bureau did not propose to change the calculation of APR, and notes that the calculation of APR is set forth in Appendix J to Regulation Z. For additional guidance regarding the calculation of APR for closed-end transactions, see the commentary to § 1026.17, as amended by this final rule. The Bureau is amending comment 17(c)(1)-10.ii to clarify that the effect of multiple rates must be reflected in certain of the disclosures required under §§ 1023.37(l) and 1026.38(o), but the Bureau notes that this does not change the underlying methodology for calculating the APR.

38(o)(5) Total Interest Percentage

As discussed in the section-by-section analysis of § 1026.37(l)(3), section 1419 of the Dodd-Frank Act amended TILA to add new section 128(a)(19), which requires that, in the case of a residential mortgage loan, the creditor disclose the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. 15 U.S.C. 1638(a)(19). TILA section 128(a)(19) also requires that the amount be computed assuming the consumer makes each monthly payment in full and on time, and does not make any overpayments.

The Bureau's Proposal

Pursuant to the Bureau's implementation authority under TILA section 105(a), proposed § 1026.38(o)(5) would have implemented this new statutory requirement by requiring creditors to disclose the "total interest percentage," using that term and the abbreviation "TIP." For guidance on disclosure and calculation of the total interest percentage on the Closing Disclosure, proposed comment 38(o)(5)-1 would have referred creditors to the requirement to disclose the total interest percentage on the Loan Estimate, found in § 1026.37(l)(3) and its commentary. In addition, for the reasons discussed in the section-by-section analysis of § 1026.37(l)(3), the Bureau proposed to exercise its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to require creditors to disclose the following descriptive statement of the total interest percentage: "This rate is the total amount of interest that you will pay over the loan term as a percentage of your loan amount." The Bureau alternatively proposed to use its authority under TILA section 105(a) and (f) and Dodd-Frank Act sections 1032(a) and 1405(b) to remove the total interest percentage from the Closing Disclosure required by proposed § 1026.19(f). The Bureau solicited comment on the proposed exemption.

Comments

In response to the proposal, as discussed above in the section-by-section analysis of § 1026.37(l)(3), industry commenters generally urged the Bureau to use its exception authority to remove the disclosure. They generally asserted that the disclosure would not be useful to consumers, that consumers would be confused by it, and that the disclosure would trigger information overload. For these same reasons, some commenters suggested that the Bureau should only require the disclosure in the Closing Disclosure. A number of commenters additionally asserted that the disclosure would alarm consumers when they see how much they would be paying in interest. Industry commenters further asserted that the disclosure would create compliance burden because it would be difficult to calculate and explain. Consumer advocacy group commenters expressed concerns that the disclosure could potentially mislead consumers about the cost of credit because the calculation would not include closing costs or prepaid finance charges. Several industry trade association commenters recommended that the Bureau provide additional clarification as to the calculation and meaning of the Total Interest Percentage disclosure if the Bureau decides to keep the disclosure. An industry commenter sought clarification as to whether hard-coded text is required for this disclosure or if the text can change, and if the latter, sought acceptable verbiage that could be used.

A number of industry commenters observed that the disclosure would be inaccurate for any loan paid off before maturity and for adjustable rate mortgage loans. They expressed concern that consumers could be misled by a potentially inaccurate metric. Several industry trade association commenters sought clarification as to whether the calculation of this disclosure would use the actual initial interest rate or the fully-indexed rate, and that it does not assume that payments increase as fast as possible.

Many industry commenters also argued that if the Bureau decides to finalize the disclosure, disclosing the total interest amount in the form of a number rather than as a percentage would be more comprehensible. On the other hand, a number of industry commenters suggested that disclosing a number for the total interest amount is unnecessary because of the Finance Charge disclosure in the Closing Disclosure.

A consumer advocacy group commenter strongly favored the Total Interest Percentage disclosure and some industry commenters did not object to its inclusion. Several associations of various State financial regulators and a joint letter from several consumer advocacy groups did not recommend that the Bureau remove the disclosure, but expressed concern that the disclosure could mislead consumers about the cost of credit because the calculation would not include closing costs or prepaid finance charges.

Lastly, a national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 128(a)(19) and any regulations promulgated thereunder.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(o)(5) and comment 38(o)(5)-1 as proposed. As discussed above in the section-by-section analysis of § 1026.37(l)(3), the Bureau's testing indicated that consumer participants generally understood the basic concept of the disclosure, even though they did not understand its more technical aspects. Although some consumers did not understand the disclosure at all and questioned why it was included, the Kleimann Testing Report concluded that participants understood the basic concept of total interest as a percentage of principal, and that most participants used the disclosure to achieve a more complete understanding of the loan. *See* Kleimann Testing Report at 299-300. As discussed above, a number of industry commenters suggested that disclosing a number for the total interest amount is unnecessary because of the Finance Charge disclosure in the Closing Disclosure. However, the Kleimann Testing Report stated that participants used the TIP as a measure of what they would pay in interest in the Closing Disclosure. The Kleimann Testing Report further indicated that participants expressed surprise at how much they would pay in interest on their mortgage loans and appreciated the disclosure for this reason. *See* Kleimann Testing Report at 299-300. Concerns were also raised during the Bureau's Small Business

Review Panel, by industry in feedback provided in response to the Small Business Review Panel Outline, in feedback received through the Bureau's website, and in comments that the total interest percentage could be difficult to calculate and explain to consumers, and would not likely be helpful to consumers. However, several industry participants in the testing process thought it would be helpful to consumers.

In light of the Bureau's testing of the total interest percentage disclosure and the concerns about consumers' ability to understand the disclosure, the Bureau is requiring creditors to disclose the descriptive statement, "The total amount of interest that you will pay over the loan term as a percentage of your loan amount." The Bureau adopts this requirement pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Based on consumer testing, the Bureau believes that consumer understanding of the total interest percentage disclosure may be enhanced through the descriptive statement of the total interest percentage, consistent with the purposes of TILA, and that the descriptive statement is in the interest of consumers and the public, consistent with section 1405(b) of the Dodd-Frank Act. For these reasons, the Bureau also believes that the disclosure of the descriptive statement regarding the total interest percentage may ensure that the features of consumer credit transactions secured by real property 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, consistent with section 1032(a) of the Dodd-Frank Act.

With respect to the argument that the disclosure should not apply to timeshare lenders, the general section-by-section analysis of § 1026.19 provides a more detailed discussion of the Bureau's decision to expand the scope of some of the disclosure requirements set forth in TILA, as amended by the Dodd Frank Act. In addition, the Bureau believes that the disclosure of the total interest percentage would be just as useful to a consumer in a credit transaction secured by a consumer's interest in a timeshare plan as to a consumer in a credit transaction secured by an interest in real property or real property with a dwelling.

Accordingly, the Bureau has decided that the total interest percentage is a useful tool for consumers and is not adopting the proposed alternative of exempting transactions subject to § 1026.19(e) and (f) from the requirements of TILA section 128(a)(19). Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this final rule, the Bureau believes that the proposed exemption is not appropriate.

For purposes of § 1026.38(o)(5), comment 38(o)(5)-1 requires that the creditor compute the total interest percentage in accordance with § 1026.37(l)(3) and its commentary. The calculation for the TIP is specifically set forth in TILA section 128(a)(19) and requires that the calculation be based on the assumption that the consumer makes each monthly payment in full and on-time, and does not make any over-payment. As discussed above, in response to the comments received, the Bureau is adopting comment 37(l)(3)-2 to provide further guidance to creditors on calculation of the total interest percentage for adjustable rate mortgage loans. In particular, when creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosure should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The Bureau is also adopting comment 17(c)(1)-10.ii to clarify that the effect of the multiple rates must be reflected in the calculation of certain disclosures, including the total interest percentage.

38(o)(6) Approximate Cost of Funds

The Bureau's Proposal

The Dodd-Frank Act amended TILA to add new section 128(a)(17). 15 U.S.C. 1638(a)(17). Among other things, that section requires creditors to disclose, in the case of residential mortgage loans, "the approximate amount of the wholesale rate of funds in connection with the loan." In light of several uncertainties and interpretive challenges in TILA section 128(a)(17), the Bureau proposed to interpret the "wholesale rate of funds" to mean the actual cost of borrowing funds for use in mortgage lending. The Bureau solicited comment on both "lender cost of funds" and "average cost of funds" pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Proposed § 1026.38(o)(6) would have required creditors to disclose the "approximate cost of funds," using that term and the abbreviation "ACF" and expressed as a percentage, and the statement "The approximate cost of funds used to make this loan. This is not a direct cost to you." For purposes of proposed § 1026.38(o)(6), "approximate cost of funds" would have meant either the most recent ten-year Treasury constant maturity rate or the creditor's actual cost of borrowing the funds used to extend the credit, at the creditor's option. The Bureau solicited comment on whether another index, such as the London Interbank Offer Rate (LIBOR), would have been a more appropriate measure of the approximate cost of funds. The Bureau also solicited comment on what would be required for creditors to disclose their actual costs of funds. Since consumer testing conducted by the Bureau suggests that consumers do not understand the disclosure and that it does not provide a meaningful benefit to consumers, the Bureau alternatively proposed to use its exception and modification authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt transactions subject to proposed § 1026.19(e) and (f) from the cost of funds disclosure requirement in TILA section 128(a)(17). The Bureau solicited comment on this proposed exemption.

Comments

Similar to the Total Interest Percentage disclosure discussed above, industry commenters generally urged the Bureau to use its exception authority to remove the Approximate Cost of Funds disclosure because they argued that the disclosure would not be useful to consumers and would generate confusion, trigger information overload, and create compliance burden because it would be burdensome to calculate and explain. Industry commenters questioned the disclosure's usefulness in helping consumers understand the cost of credit because the creditor's cost of funds is not a direct cost to consumers. They also argued that a creditor's cost of funds is a misleading measurement of a creditor's actual cost of funding mortgage loans. Commenters suggested that getting to the true cost of loans is akin to getting to the cost to a creditor of doing business, which would not only include the creditors' cost of borrowing money to fund loans, but also, for example, overhead expenses. Commenters also expressed concern that the disclosure would be viewed negatively by consumers.

A few commenters expressed concern over disclosing a metric that could provide sensitive business information to competitors. Three national trade associations representing banks and nonbank residential mortgage loan lenders predicted that it would be unlikely that creditors would choose to disclose their actual cost of funds if given the option to provide a publicly-available index. They also expressed concern about the proposed requirement that the Treasury rate disclosed must be the "most recent" rate, because the rate changes daily. They urged the Bureau to provide a value established within the last 60 days, because, as proposed, it would be impossible to provide an accurate disclosure three business days before closing.

Several industry commenters also argued that this disclosure could impose significant compliance burden because the cost of funds varies from creditor to creditor, and is only one of many factors impacting a particular loan's interest rate. Some industry commenters also argued that this disclosure would be very difficult for creditors to calculate without significant additional guidance from the Bureau, especially since this disclosure is dependent on the ways in which loans are originated, sold, or held.

Trade associations representing various State regulators also expressed concern that the disclosure could mislead consumers about the cost of credit and urged the Bureau to provide a more thorough explanation of the Approximate Cost of Funds disclosure. An industry commenter sought clarification as to whether hard-coded text is required for this disclosure or if the text can change, and if the latter, sought acceptable verbiage that could be used.

Lastly, a national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 128(a)(17) and any regulations promulgated thereunder.

Final Rule

For the reasons discussed below, the Bureau has decided to use its exception and modification authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt transactions subject to proposed § 1026.19(e) and (f) from the cost of funds disclosure requirement in TILA section 128(a)(17). Accordingly, the Bureau is not adopting § 1026.38(o)(6).

Consumer testing conducted by the Bureau suggests that consumers do not understand the disclosure and that it does not provide a meaningful benefit to consumers. As stated in the report on the Bureau's consumer testing conducted prior to issuance of the proposal, the disclosure generally raised more questions than it answered, and most participants suggested removing it. *See* Kleimann Testing Report at 301-303. Most consumer participants stated that because the disclosure did not disclose a direct cost to them, it was not important to them. As discussed in the Kleimann Testing Report, the Bureau conducted consumer testing using the terms "lender cost of funds," "average cost of funds," and "approximate cost of funds," along with descriptive statements of these terms. *See* Kleimann Testing Report at 297, n. 36. Even though several different approaches were used during the testing process to present the Approximate Cost of Funds disclosure, throughout five rounds of consumer testing, only one consumer showed any interest in the disclosure, stating that it was "interesting." All other consumers were either confused by the disclosure or did not find it useful. In all cases, experienced and non-experienced consumers that participated in the Bureau's consumer testing of the cost of funds disclosure questioned the disclosure and were generally unable to articulate how to use the information. While participants were able to read that the Approximate Cost of Funds was not a direct cost to them, they questioned why it was being disclosed if it was not a cost to them and/or wanted to know who was paying it. The Bureau's consumer testing results suggest that the disclosure is unlikely to provide a meaningful benefit to consumers in the form of useful information, and that consumers are likely to be confused by the Approximate Cost of Funds disclosure and are unlikely to use it when evaluating loans, which lends support to commenters' concerns about the disclosure confusing consumers and triggering information overload. Industry participants also believed that consumers would be confused by the cost of funds disclosure. Even some industry participants at the Bureau's consumer testing were confused by the disclosure. *See* Kleimann Testing Report at 301-303. The Bureau's consumer testing results further support industry commenters' concerns about consumers reacting negatively to the disclosure as some consumers expressed feeling threatened or other negative reactions after reading the disclosure. *See* Kleimann Testing Report at 302. Accordingly, the Bureau believes that the Approximate Cost of Funds disclosure would not provide consumer protection benefits, and that this disclosure could harm consumer understanding and risk information overload.

The Bureau also believes this approach will simplify the disclosure forms and reduce compliance burden. Based on concerns raised by the Small Business Review Panel, industry feedback provided in response to the Bureau's Small Business Review Panel Outline, feedback provided through the Bureau's website in the Know Before You Owe initiative, and in comments received, the Bureau believes that the disclosure may be very burdensome for creditors to calculate and explain, and may result in the disclosure of potentially sensitive business information. Creditors may have different costs of funds for different loan products. For example, a creditor may have one cost of funds for a 30-year fixed loan, but a different cost of funds for a 3/1 adjustable rate mortgage loan. There could be significant administrative burden and compliance risk if the creditor were required to track the various cost of funds for all the loan products it offers. Additional training would also likely be required so that a creditor could make sure its staff could explain the disclosure to consumers. Further, if creditors are permitted to disclose a publicly-available index that does not reflect their actual cost of funds, the disclosure would be misleading instead of being protective of consumer interests. In light of testing results that suggest that the Approximate Cost of Funds disclosure would not be useful to consumers, the Bureau does not believe that these significant compliance burdens are counterbalanced by the consumer benefit of the disclosure.

As discussed above, some industry commenters urged that, if the Bureau decided to retain this disclosure, various modifications be made to the rate requirements and that the Bureau provide additional explanation and guidance for how to calculate this disclosure, including whether hard-coded text is required or if the text can change. A national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. As the Bureau has decided not to adopt § 1026.38(o)(6), the issues addressed in these and similar comments are moot.

The Bureau believes the exemption will carry out the purposes of TILA, consistent with TILA section 105(a), by avoiding consumer confusion and information overload, thereby promoting the informed use of credit. For these same reasons, the exemption will help ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Finally, the Bureau has considered the factors in TILA section 105(f) and has determined that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this final rule, the Bureau has determined that an exemption is appropriate.

38(p) Other Disclosures

As discussed below, proposed § 1026.38(p) would have implemented statutory provisions requiring creditors to disclose information regarding appraisals, contract details, liability after foreclosure, refinancing, and tax deductions. These disclosures would have been provided under the heading "Other Disclosures."

38(p)(1) Appraisal

As noted above in the section-by-section analysis of § 1026.37(m)(1), the Dodd-Frank Act amended ECOA to require creditors to provide consumers with a copy of any written appraisal conducted for a loan that is or will be secured by a first lien on a dwelling, and also added a requirement that creditors disclose that right to consumers at the time of application. ECOA section 701(e); 15 U.S.C. 1691(e). In addition, the Dodd-Frank Act amended TILA to require creditors to provide consumers with an appraisal copy at least three days prior to consummation of certain "higher-risk" mortgages. TILA section 129H(c)-(d); 15 U.S.C. 1639h(c)-(d). As discussed above, these provisions were implemented in separate Bureau and joint interagency rulemakings, respectively. The Bureau also proposed appraisal disclosures similar to those required by the statutes to be included on the Loan Estimate in transactions subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively, pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a).

In the proposal, the Bureau stated its intent to harmonize the appraisal notice proposed in § 1026.38(p)(1) with the final rules implementing the statutory appraisal disclosure requirements, both of which have been issued since the proposal. The Bureau states in the proposal that, as proposed, the notice required by § 1026.38(p)(1) was consistent with the Bureau's 2013 ECOA Appraisals Rule and the 2013 Interagency Appraisals Rule. As stated in the proposal, the Bureau believed the additional disclosure reminding consumers of their right to receive a copy of an appraisal conducted for their loan will promote the informed use of credit by consumers, consistent with TILA section 105(a), and ensure that the features of mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the loans, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Specifically, the Bureau proposed, pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a), that creditors provide a disclosure regarding the right to receive an appraisal on the Closing Disclosure the consumer receives three days prior to consummation. Like proposed § 1026.37(m)(1), this disclosure requirement would have applied only to transactions subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively. Proposed § 1026.38(p)(1)(i) would have required the creditor to disclose that, if there was an appraisal of the property in connection with the loan, the creditor is required to provide the consumer with a copy of such appraisal at no additional cost to the consumer at least three days prior to consummation. Proposed § 1026.38(p)(1)(ii) would have required the creditor to disclose that, if the consumer has not yet received a copy of the appraisal, the consumer should contact the creditor using the information disclosed pursuant to § 1026.38(r). Proposed § 1026.38(p)(1) would have required these disclosures to be provided under the subheading “Appraisal.” Proposed comment 38(p)(1)-1 would have provided guidance regarding the applicability of § 1026.38(p)(1). The comment would have stated that if a transaction is not subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively, the disclosure required by proposed § 1026.38(p)(1) may be omitted from the Closing Disclosure. Comments received in relation to the appraisal disclosure generally are discussed in the section-by-section analysis of § 1026.37(m)(1). The Bureau did not receive any comments specifically related to proposed § 1026.38(p)(1) and is adopting it as proposed based on the authority stated in the proposal. The Bureau is adopting comment 38(p)(1)-1 as revised to delete the reference to the disclosures being made as applicable, for the reasons stated in the section-by-section analysis of § 1026.37.

38(p)(2) Contract Details

TILA section 128(a)(12) requires the creditor to provide a statement that “[t]the consumer should refer to the appropriate document for any information such document provides about nonpayment, default, the right to accelerate the maturity of the debt, and prepayment rebates and penalties.” 15 U.S.C. 1638(a)(12). This requirement is currently implemented in § 1026.18(p), which requires the creditor to provide a statement that the consumer should refer to the appropriate contract document for information pertaining to nonpayment, default, the right to accelerate the maturity of the loan obligation, and prepayment rebates and penalties. Section 1026.18(p) also provides the creditor the option to disclose a reference to the contract document for information regarding security interests and assumption of the legal obligation.

The Bureau proposed § 1026.38(p)(2) to implement TILA section 128(a)(12) for transactions subject to § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). Like current § 1026.18(p), proposed § 1026.38(p)(2) would have required the creditor to disclose a statement that the consumer should review the loan contract for additional information about loan terms. Specifically, under proposed § 1026.38(p)(2), the creditor would have been required to state that the consumer should refer to the appropriate loan document and security instrument for information about nonpayment, what constitutes a default under the legal obligation, circumstances under which the creditor may accelerate the maturity of the obligation, and the rules for prepayments. Proposed § 1026.38(p)(2) would have required this information to be disclosed under the subheading "Contract Details." The Bureau did not receive any comments on proposed § 1026.38(p)(2) and is adopting it as proposed based on the authority stated in the proposal.

38(p)(3) Liability After Foreclosure

As discussed in the section-by-section analysis of proposed § 1026.37(m)(7), section 1414(c) of the Dodd-Frank Act created new TILA section 129C(g), which establishes certain requirements for residential mortgage loans subject to protection under a State's anti-deficiency law. 15 U.S.C. 1639c(g). TILA section 129C(g)(2) generally requires the creditor to provide a written notice to the consumer describing the protection provided by the applicable State's anti-deficiency law and the significance for the consumer of the loss of such protection. For refinance transactions only, TILA section 129C(g)(3) generally requires creditors that receive from or provide to the consumer an application for refinancing that would cause the loan to lose the protection of an anti-deficiency law to provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection. As discussed above, TILA sections 129C(g)(2) and 129C(g)(3) are implemented in § 1026.37(m)(7), which is required for refinance transactions only.

Proposed § 1026.38(p)(3) would have implemented the requirements of TILA sections 129C(g)(2) and 129C(g)(3) for all transactions subject to § 1026.19(f), not limited to refinance transactions, pursuant to the Bureau's implementation authority under TILA section 105(a). Specifically, under proposed § 1026.38(p)(3), if State law may offer consumers protection from liability, the creditor would have been required to disclose a brief statement that State law may protect the consumer from liability for the unpaid balance. The statement also would have been required to advise the consumer that any protection afforded under State law may be lost if the consumer refinances the loan or incurs additional debt on the property and that the consumer should consult an attorney for additional information. However, if State law does not protect the consumer from liability for the unpaid balance, proposed § 1026.38(p)(3) would have required the creditor to disclose that fact. The information required by proposed § 1026.38(p)(3) would have been disclosed under the subheading "Liability after Foreclosure." Proposed comment 38(p)(3)-1 would have clarified that whether the consumer is afforded protection from liability in a foreclosure varies by State and that proposed § 1026.38(p)(3) requires the creditor to provide a general description of the applicable State's requirements. Proposed comment 38(p)(3)-1 also would have clarified that any type of protection afforded by State law, other than a statute of limitations, requires a statement that State law may protect the consumer from liability for the unpaid balance.

Several different industry commenters criticized the disclosure required by § 1026.38(p)(3) as too simplified to distill the complex State law concepts the disclosure is intended to describe. Further, the commenters noted that applicable State anti-deficiency laws are fact-dependent and may not be accurately described by the two "check box" disclosures shown to illustrate § 1026.38(p)(3) on proposed form H-25. These commenters stated that the creditor or settlement agent would, in effect, be practicing law by attempting to complete the disclosure required by § 1026.38(p)(3). These commenters suggested that the proposed disclosure be removed or changed so as not to require the creditor to make a choice about the applicability of State anti-deficiency laws. In contrast, a document preparation company commented that the liability after foreclosure disclosure was appropriately high-level to put consumers on notice without being misleading. A national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 129C(g) and any regulations promulgated thereunder.

As stated in the proposal, pursuant to the Bureau's authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the disclosures required by proposed § 1026.38(p)(3) modified the statutory requirements that the creditor or loan originator must describe the protection provided by the applicable State's anti-deficiency law, for all transactions subject to proposed § 1026.19(f). The Bureau believes that the generalized anti-deficiency disclosure required by proposed § 1026.38(p)(3) is effective at informing consumers about the existence or absence of State anti-deficiency laws, and that a more detailed State-specific disclosure as described in TILA section 129C(g) could be confusing for consumers and costly and burdensome to implement. The Bureau does not believe that the high-level disclosure required by § 1026.38(p)(3) constitutes the practice of law. Instead, as stated in the proposal, the Bureau recognizes that significant State law variations exist regarding anti-deficiency protection and for this reason, § 1026.38(p)(3) requires creditors to disclose a statement that consumers should consult a lawyer for more information about any applicable anti-deficiency laws, as was proposed. With respect to the argument that the disclosure should not apply to timeshare lenders, the general section-by-section analysis of § 1026.19 provides a more detailed discussion of the Bureau's decision to expand the scope of some of the disclosure requirements set forth in TILA, as amended by the Dodd Frank Act. In addition, the Bureau believes that the disclosure of the protection provided by the relevant anti-deficiency law would be just as useful to a consumer in a credit transaction secured by a consumer's interest in a timeshare plan as to a consumer in a credit transaction secured by an interest in real property or real property with a dwelling.

One large bank commenter suggested that the Bureau clarify that § 1026.38(p)(3) is a safe harbor that would immunize a creditor from any State law claims arising out of the use of the disclosure language because creditors may have increased exposure to liability by using language not precise enough to accurately describe each State's anti-deficiency laws. The Bureau has no authority to immunize creditors with respect to State law. However, the Bureau is finalizing amendments to the rules regarding preemption of inconsistent State disclosure requirements and exemptions from State laws, which are discussed under the section-by-section analyses of §§ 1026.28 and 1026.29 above. Several trade associations representing mortgage lenders requested guidance on whether § 1026.38(p)(3) would require the creditor to determine whether the property is in a State that has an anti-deficiency law. The Bureau believes that such guidance is unnecessary because § 1026.38(p)(3), as finalized and as illustrated by form H-25 of appendix H to Regulation Z, clearly requires the creditor to determine whether, after a foreclosure that does not cover the amount of unpaid balance on the loan, State law may protect the consumer from liability for the unpaid balance after foreclosure or, alternatively, whether State law does not protect the consumer from liability.

For the aforementioned reasons, the Bureau is adopting § 1026.38(p)(3) as proposed, based on the authority stated in the proposal. The Bureau is adopting comment 38(p)(3)-1 substantially as proposed but with minor modifications for clarity. Specifically, the Bureau believes the modifications from TILA section 129C(g) will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(p)(4) Refinance

Proposed § 1026.38(p)(4) would have implemented TILA section 128(b)(2)(C)(ii) for transactions subject to § 1026.19(f) by requiring the creditor to disclose the statement required by proposed § 1026.37(m)(5), regarding the consumer's future ability to refinance his or her loan. For a detailed discussion of the Bureau's implementation of TILA section 128(b)(2)(C)(ii), see the section-by-section analysis of § 1026.37(m)(5) above. The Bureau did not receive any comments specifically on § 1026.38(p)(4) and is adopting it as proposed, based on the authority stated in the proposal.

38(p)(5) Tax Deductions

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act) amended TILA to add new section 128(a)(15), 15 U.S.C. 1638(a)(15), which requires that, in the case of a consumer credit transaction that is secured by the principal dwelling of the consumer in which the extension of credit may exceed the fair market value of the collateral, the creditor must disclose certain tax implications for the consumer. Public Law 109–8, 119 Stat. 23. The Board stated its intent to implement the Bankruptcy Act amendments in an advance notice of proposed rulemaking published in October 2005 as part of its ongoing review of Regulation Z. 70 FR 60235 (Oct. 17, 2005). The issue was addressed again in the Board's 2009 Closed-End Proposal, although a final rule was not adopted. 74 FR 43232, 43310.

In the 2009 Closed-End Proposal, the Board proposed to implement TILA section 128(a)(15) by requiring creditors to provide the disclosure required by TILA section 128(a)(15) for transactions secured by a dwelling. 74 FR 43310-11. The proposed rule permitted, but did not require, creditors to provide the disclosure in transactions secured by real property that does not include a dwelling, even though the statute limits the disclosure to transactions secured by the principal dwelling of the consumer. *Id.* The Board reasoned that it would be unnecessarily burdensome to require creditors to create separate disclosures for transactions secured by real property and those secured by a dwelling and proposed that the creditor be permitted, but not required, to provide disclosures regarding Federal tax implications for transactions secured by real property. *Id*.

Proposed § 1026.38(p)(5) would have implemented the requirements of TILA section 128(a)(15) for transactions subject to proposed § 1026.19(f), including transactions secured by real property that does not include a dwelling, pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Specifically, for all transactions subject to § 1026.19(f), proposed § 1026.38(p)(5) would have required creditors to state that, if the consumer borrows more than the value of the property, the interest on the loan amount above the market value is not deductible from Federal income taxes. Proposed § 1026.38(p)(5) also would have required a statement advising the consumer to consult a tax professional for additional information. The Bureau stated in the proposal that it believed the proposed disclosure would promote the informed use of credit in all transactions subject to § 1026.19(f), and therefore would be consistent with the purposes of TILA. The proposal further stated that the Bureau believed requiring the disclosure for all transactions subject to proposed § 1026.19(f), whether secured by the consumer's principal dwelling or other real property, would facilitate industry compliance by reducing the time and resources that would be expended to determine whether a loan transaction is subject to the disclosure requirements regarding the deductibility of Federal income taxes. In addition, the Bureau stated it believed that the proposed disclosure would ensure that the features of mortgage transactions are disclosed in manner that ensures that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the cost, benefits, and risks associated with the transaction, consistent with Dodd-Frank Act section 1032(a) and would improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

A GSE commented that the proposed tax deduction disclosure is overly simplistic, to the consumer's potential detriment. The GSE pointed out that a consumer still may not be able to take advantage of a tax deduction even if the loan amount is not greater than the value of the home if the consumer does not itemize deductions on his or her federal tax return. Instead, the GSE suggested the Bureau adopt more general language to state that mortgage interest payments may be deductible and to consult a tax expert for details. The information required to be included in the tax deduction disclosure, specifically, that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes, is set forth in TILA section 128(a)(15). Moreover, the Bureau does not believe that the disclosure could be detrimental to consumers. On the contrary, the disclosure illustrated by proposed form H-25 of appendix H to Regulation Z advises the consumer to consult a tax advisor for more information, which the Bureau believes may alert consumers to the fact that additional tax information may be obtained from other sources and activate consumers to seek such advice. Accordingly, the Bureau is adopting § 1026.38(p)(5) as proposed, based on the authority stated in the proposal.

38(q) Questions Notice

Proposed § 1026.38(q) would have required the creditor to provide a statement that the consumer should contact the creditor with any questions about the disclosures required under § 1026.19(f), a reference to the Bureau's website to obtain more information or to make a complaint, and a prominent question mark. Although this notice is not currently expressly required by TILA, RESPA, or their implementing regulations, the Bureau proposed to require that the Closing Disclosure contain such a notice based on its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a). The Bureau stated in the proposal that it believed this disclosure would effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and timelier information on the costs of the closing process, and would also ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

The Bureau stated in the proposal that requiring disclosure of this notice would complement proposed § 1026.19(f)(1)(ii), which requires delivery of the Closing Disclosure three business days prior to consummation. The proposal noted that TILA section 128(b)(2)(D) requires that a corrected TILA disclosure be received by the consumer three business days prior to consummation if the APR as initially disclosed becomes inaccurate, and stated that the Bureau understands that because of the high frequency of annual percentage rate changes triggering the corrected TILA disclosure obligation, many creditors currently provide the corrected TILA disclosure as a matter of course even if it is not required. The proposal also noted that RESPA section 4 requires that the RESPA settlement statement be provided "at or before closing," however, and stated that the Bureau understands that it is typically given at closing. Section 1026.19(f)(1)(ii) reconciles the two provisions by requiring that consumers be given all of the RESPA- and TILA-mandated disclosures three business days prior to consummation. The Bureau stated that it expected that during this three-business-day period, the consumer would be able to review the Closing Disclosure, contact the creditor with questions regarding the information contained on the Closing Disclosure, and correct any errors prior to consummation.

Under proposed § 1026.38(q)(1), the required notice would have included a statement directing the consumer to contact the creditor with any questions about the disclosures required under § 1026.19(f). The Bureau stated its belief in the proposal that the notice required under proposed § 1026.38(q) should in all cases reference the creditor, rather than the closing agent, even if the closing agent provides the disclosures required under § 1026.19(f) because the creditor is better positioned to answer the consumer's questions relating to the disclosures. The Bureau sought comment, however, on whether the notice required under proposed § 1026.38(q) should include a statement directing the consumer to contact the creditor or the closing agent with questions. Proposed § 1026.38(q)(2) would have required the questions notice also to direct the consumer to the Bureau's website to obtain more information or make a compliant. The Bureau stated in the proposal that it plans for the Bureau's website to offer important information and useful tools that consumers can access at key points in the mortgage origination process, including during the three-business-day period between the consumer's receipt of the Closing Disclosure and consummation. The proposal stated that directing consumers to this website would therefore promote consumer understanding of credit terms and closing costs and of benefits and risks associated with the transaction in light of the facts and circumstances.

Proposed § 1026.38(q)(3) also would have included a prominent question mark in the disclosure. The Bureau also proposed comment 38(q)(3)-1, which would have clarified that the prominent question mark was an aspect of the proposed Closing Disclosure form H-25 of appendix H to Regulation Z, the standard form or model form. The comment would have provided further guidance regarding the graphic depiction of the prominent question mark. The comment would have clarified that if the creditor or closing agent deviates from the depiction of the question mark as shown on form H–25, the creditor or closing agent complies with § 1026.38(q) if the size and location of the question mark on the Closing Disclosure are substantially similar in size and location to the question mark shown on form H–25, and the creditor or closing agent otherwise complies with § 1026.38(t)(5) regarding permissible changes to the form of the Closing Disclosure. The Bureau noted in the proposal that consumer testing conducted by the Bureau indicated that use of the prominent question mark icon in the questions notice drew consumers' attention to the notice.

A large bank commented that the notice should direct the consumer to the creditor or the settlement agent, depending on the type of question. The commenter suggested that the language be revised to state that the borrower should contact the creditor to resolve issues regarding loan terms and the settlement agent with respect to closing costs. The commenter stated that directing questions to both the settlement agent and the creditor would permit those parties to work together to amicably resolve issues before a consumer submitted a complaint. Similarly, a national title company commented that the disclosure should direct consumers to both the creditor and the settlement agent because where a settlement agent prepares the form and handles a closing, the settlement agent would likely receive most of the consumers' questions. The commenter suggested that the disclosure should identify both the settlement agent and the creditor and explain the nature of their knowledge.

The Bureau is persuaded that directing questions solely to the creditor would not be in the best interests of consumers because there are many types of questions for which the creditor is not in the best position to answer, such as questions related to the payment of a prorated real estate tax or other settlement costs. The Bureau does not believe, however, that a disclosure directing consumers to a settlement agent for certain types of questions and to the creditor for other types of questions is in the best interest of consumers given the multitude of reasons that a consumer may have questions about a loan transaction. Accordingly, the Bureau is revising § 1026.38(q)(1) to require a statement that if the consumer has any questions, he or she should use the contact information disclosed under § 1026.38(r). The Bureau believes that directing a consumer to all of the professionals involved in the transaction – the lender, the mortgage broker, the real estate brokers, and the settlement agent– will make it more likely that the consumer will find the most appropriate person to answer his or her question. Accordingly, consistent with Dodd-Frank Act section 1032(a), the revision will ensure that the features of consumer credit transactions secured by real property 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. The revision is also consistent with the purposes of TILA and RESPA, because it will promote the informed use of credit by consumers, and ensure effective disclosure to consumers.

For the aforementioned reasons, the Bureau is adopting § 1026.38(q)(3) as proposed, based on the authority stated in the proposal. The Bureau is adopting § 1026.38(q)(1) with a revision to require a statement directing the consumer to the information disclosed under § 1026.38(r) rather than to the creditor. The Bureau is adopting § 1026.38(q)(2) substantially as proposed but with minor revisions for clarity, including to state that the uniform resource locator address to the Bureau's website must be disclosed. The Bureau is adopting comment 38(q)(3)-1 substantially as proposed but with a minor modification to remove references to the closing agent because under § 1026.19(f)(1)(v), a settlement agent is required to comply with the relevant requirements of § 1026.19(f) if it provides the Closing Disclosure, which would include the requirements of § 1026.38(q). The Bureau is adopting the revisions to § 1026.38(q)(1) and (2) based on its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a).

38(r) Contact Information

Under TILA section 128(a)(1) and Regulation Z § 1026.18(a), the TILA disclosures must include the identity of the creditor. Comment 18(a)-1 clarifies that the "identity" of the creditor must include the name of the creditor, but may also include the creditor's address and/or telephone number. As stated in appendix C to Regulation X, the RESPA GFE must include the name, address, phone number, and email address (if any) of the loan originator. As stated in appendix A to Regulation X, the RESPA settlement statement must include the name and mailing address of the lender and the name, address, and phone number of the settlement agent. Moreover, TILA section 129B(b)(1)(B), which was added to TILA by section 1402 of the Dodd-Frank Act, provides that each mortgage originator must include on all loan documents any unique identifier of the mortgage originator provided by the NMLSR. However, TILA, RESPA, and their implementing regulations currently do not expressly require the disclosure of: (1) the email address of the creditor (unless the creditor is also the loan originator, in which case it must be disclosed on the GFE but not on the RESPA settlement statement); (2) the name, email address, and phone number of the consumer's primary contact with the creditor; (3) the email address of the closing agent; (4) the name, email address, and phone number of the consumer's and seller's real estate brokers, if any; or (5) the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which a closing agent or real estate broker is licensed and/or registered, if any.

The Bureau received feedback from the public through its Know Before You Owe initiative that requested contact information on the disclosure to appear only on one part of the Closing Disclosure. Based on this feedback, the Bureau tested a prototype design with contact information for the creditor, mortgage broker, and other parties related to the transaction in one table. During consumer testing, consumers and industry participants found the contact information table useful and easy to follow, and indicated that it contained the basic information they needed to follow up with the various parties related to the transaction.

Therefore, the Bureau proposed to require that the Closing Disclosure contain a contact information table as set forth in proposed § 1026.38(r) based on its authority under TILA sections 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau stated its belief in the proposal that the contact information table required to be disclosed under proposed § 1026.38(r) will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and more timely information on the costs of the closing process. The Bureau believed that providing consumers with multiple types of contact information for the critical non-seller parties participating in the transaction will allow consumers easier access to information relevant to the transaction (including costs), which in turn enhances consumer understanding of the costs, benefits, and risks associated with the transaction in light of the facts and circumstances (which is consistent with Dodd-Frank Act section 1032(a)). The Bureau also stated its belief in the proposal that such disclosure will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public (which is consistent with Dodd-Frank Act section 1405(b)).

Moreover, the Bureau proposed § 1026.38(r) based on its mandate under sections 1032(f), 1098, and 1100A of the Dodd-Frank Act to propose rules and forms that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. As discussed above, appendix C to Regulation X states that the RESPA GFE must include the name, address, phone number, and email address (if any) of the loan originator, and pursuant to appendix A to Regulation X, the RESPA settlement statement must include the name and mailing address of the lender and the name, address, and phone number of the settlement agent. Accordingly, as part of the Bureau's statutory mandate to integrate the TILA and RESPA disclosures, the Bureau stated in the proposal that it must integrate the disclosures currently required under Regulation X with the TILA-mandated disclosures of the creditor's identity, discussed above.

As noted above, TILA section 129B(b)(1)(B), as added by section 1402 of the Dodd-Frank Act, provides that each mortgage originator must include on all loan documents any unique identifier of the mortgage originator provided by NMLSR. As discussed in the section-by-section analysis of § 1026.37(k), since the proposal was issued, new TILA section 129B(b)(1)(B) has been implemented in the Bureau's 2013 Loan Originator Final Rule as § 1026.36(g). The Bureau proposed to use its authority under TILA section 105(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank section 1405(b) to include in the contact information table to be disclosed under § 1026.38(r) the NMLSR identification number and State license number for the creditors, mortgage brokers, and the individual persons employed by such entities, as applicable, since the additional information of the NMLSR and license numbers for State regulated settlement service providers will improve consumer awareness and understanding of transactions involving residential mortgage loans and is therefore in the interest of consumers and the public by providing the consumer with information about the licensing of the settlement service providers. The proposal's requirement to include the NMLSR ID on the Closing Disclosure complements those adopted in § 1026.36(g) in the Bureau's 2013 Loan Originator Final Rule. Section 1026.36(g) as finalized requires a loan originator organization to include its name and NMLSR ID as well as the name and NMLSR ID of any individual loan originator with primary responsibility for the loan origination on certain specified loan documents for all consumer credit transactions secured by a dwelling.

The Bureau also stated its belief in the proposal that the disclosure of contact information in a tabular format as required by proposed § 1026.38(r) would complement § 1026.19(f)(1)(ii), which requires delivery of the Closing Disclosure three business days prior to consummation. As noted above, § 1026.19(f)(1)(ii) reconciles the TILA and RESPA timing provisions by requiring that consumers be given the integrated disclosures three business days prior to consummation. During this three-business-day period, the Bureau stated its expectation in the proposal, that the consumer can review the Closing Disclosure, contact the creditor, closing agent, mortgage broker, and real estate brokers with questions regarding the information contained on the Closing Disclosure, and correct any errors prior to consummation. Accordingly, the contact information table required under proposed § 1026.38(r) would have made it easier for consumers to contact the critical non-seller parties participating in the transaction during the three-business-day period prior to consummation. The inclusion of primary contact email addresses and phone numbers in the table also would have facilitated efficient communication between the consumer and the other parties.

As applicable, the table required by proposed § 1026.38(r) would have included contact information for the creditor, the mortgage broker, the consumer's real estate broker, the seller's real estate broker, and the closing agent. The table would include the following contact information for each party, as applicable: name, address, NMLSR identification/license number, name of primary contact, NMLSR identification/license number of the primary contact, email address of primary contact, and phone number of primary contact.

Proposed comments 38(r)-1 through -6 would have provided additional guidance regarding these required disclosures. For instance, proposed comment 38(r)-3 would have clarified that the address disclosed in the contact information table is the identified party's place of business where the primary contact for the transaction is located (usually the local office), rather than a general corporate headquarters address. Similarly, proposed comment 38(r)-6 would have clarified that the primary contact working at the identified party is the individual who interacts most frequently with the consumer and who has an NMLSR identification number or, if none, a license number, or other unique identifier to be disclosed under proposed § 1026.38(r)(3) and (5), as applicable, and provides examples of the primary contact to be disclosed in a given transaction.

Comments received related to the contact information table generally are discussed in the section-by-section analysis of § 1026.37(k), above. Specifically with respect to the contact information table required by § 1026.38(r), a large bank requested that the Bureau eliminate the requirement to disclose the real estate brokers' names and contact information because real estate brokers are less relevant at the closing stage of the loan process and it would be burdensome for lenders to obtain such information. A large bank also requested guidance on whether the primary contact for the creditor must be the loan originator's name or whether the creditor may designate any individual as its contact. A national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure of the creditor's NMLSR identification number would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 129B(b)(1)(B) and any regulations promulgated thereunder.

With respect to the commenter's request to eliminate the requirement to disclose real estate brokers' contact information, the Bureau declines to eliminate that requirement because it believes consumers will benefit from disclosure of real estate broker contact information at closing. Indeed, consumers' relationships with real estate brokers differ widely and there may be some consumers who consult their real estate broker at the closing stage of a transaction. A consumer may find it easier to ask a question with such contact information being readily available on the Closing Disclosure. Moreover, the Bureau does not believe it is particularly burdensome for a creditor to obtain the name and contact information for the real estate brokers in the transaction. The creditor could obtain such information from the real estate purchase and sale contract or from the consumer directly.

Regarding the request for guidance on whether a creditor may designate any individual as a contact for the consumer, § 1026.38(r)(4) would have required disclosure of the name of the natural person who is the primary contact for the consumer which, in the case of the creditor is likely to be the loan originator. Section 38(r)(4) would not have permitted designation of a natural person completely unrelated to the consumer's transaction as the primary contact for the consumer in all instances but there may be situations where, depending on the facts and circumstances, the primary contact for the consumer is not the loan originator. With respect to the request that the proposed disclosure of the creditor's NMLSR identification number not apply to timeshare lenders because such lenders are exempt from TILA section 129B(b)(1)(B), that section of TILA is implemented by the 2013 Loan Originator Final Rule as § 1026.36(g). Section 1026.38(r)(3) and (5) requires disclosure of the creditor's NMLSR identification number pursuant to the Bureau's authority under TILA section 105(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank section 1405(b). This final rule does not implement TILA section 129B(b)(1)(B) and thus, the commenter's request for an exemption is not relevant to the NMLSR identification number required by § 1026.38(r)(3) and (5).

As discussed more fully in the section-by-section analysis of § 1026.37(k), two GSEs commented and requested in an ex parte meeting that disclosure of a State-issued license number or other unique identification number also include the State that issued the license. In response to this comment, the Bureau is revising § 1026.38(r)(3) and (5) to require disclosure of a two letter abbreviation to designate the State, territory, or locality issuing a license identification number or other unique identifier when such is disclosed. The Bureau is likewise revising comments 38(r)-4 and -5 to clarify how to disclose such abbreviation. Also in response to the GSE's comment, the Bureau is revising the design of the contact information table in form H-25 of appendix H to Regulation Z to provide separate rows for disclosure of an NMLSR ID and the State license identification number or other unique identifier. This revision also enables the insertion of the abbreviation for the State issuing the license as required by revised § 1026.38(r)(3) and (5).

For the reasons discussed and based on the legal authority discussed above and in the proposal, the Bureau is adopting § 1026.38(r) as revised. The Bureau is further revising § 1026.38(r) to use the term settlement agent, rather than closing agent, to conform to form H-25 of appendix H to Regulation Z. The Bureau did not receive comments on any of the proposed commentary to § 1026.38(r). The Bureau is adopting comments 38(r)-1, -4, and -5 as revised to delete the reference to disclosing "N/A" for an NMLSR ID for the reasons discussed in the section-by-section analysis of § 1026.38 and comments 38-1 and 38(r)-2 are revised with minor modifications for clarity. The Bureau is further revising comments 38(r)-4 and -5 to require disclosure of the abbreviation of the State issuing a license identification number for the reasons discussed above. Lastly, the Bureau is revising comments 38(r)-1, -3, -4, -5, and -6 to refer to settlement agent, rather than closing agent for the subheading and content of the disclosures to conform with form H-25 and to remove references to the closing agent, for the same reasons described in the section-by-section analysis of § 1026.38(q) above. The Bureau is also adding comment 38(r)-7 to clarify that disclosure of a general number or email address for the lender, mortgage broker, real estate broker, or settlement agent, as applicable, satisfies the requirements of § 1026.38(r)(6) and (7) under certain circumstances, in response to comments discussed in the section-by-section analysis of § 1026.37(k).

38(s) Signature Statement

For the reasons discussed and based on the legal authority set forth in the section-by-section analysis of § 1026.37(n), proposed § 1026.38(s) would have implemented the requirements of TILA section 128(b)(2)(B)(i) for transactions subject to § 1026.19(f). The disclosure requirements in proposed § 1026.38(s) would have mirrored the requirements in § 1026.37(n). Proposed comment 38(s)-1 would have cross-referenced the commentary to proposed § 1026.37(n) for guidance regarding optional signature requirements and signature lines for multiple consumers.

As described in the proposal, during the Bureau's Small Business Review Panel, some industry participants expressed concern that consumers might be confused about the effect of signing the Closing Disclosure to acknowledge receipt. Small Business Review Panel Report at 29. Based on this feedback, the Panel recommended that the Bureau consider whether to revise the signature statement on the prototype form, or whether additional guidance should be provided to clarify the effect of a signature line on the consumer's legal obligation. *Id*.

Comments received with respect to the signature statement required by § 1026.37(n) that also relate to the disclosure required by § 1026.38(s) are discussed in the section-by-section analysis of § 1026.37(n). Specifically with respect to the disclosure required by § 1026.38(s), several varied industry commenters stated their belief that the statement following the signature line would be confusing when the consumer received the Closing Disclosure at closing when the transaction will almost certainly be consummated. Though § 1026.19(f) typically requires receipt by the consumer of the Closing Disclosure three business days before consummation, a consumer may receive the Closing Disclosure on the day of closing under the limited circumstances permitted by § 1026.19(f). Similarly, certain commenters objected to the word "Applicant" being shown under the signature line on form H-25 given that in the closing stage of a transaction, the consumer is more typically referred to as the borrower. One national title company praised the signature line disclosure as clear and to the point.

Several industry commenters requested guidance on who meets the definition of consumer and, specifically, whether a non-applicant with the right to cancel would be required to sign the Closing Disclosure pursuant to § 1026.38(s) if a creditor elected to include the signature line. A GSE requested that the Bureau add a statement with the signature line that the information from the consumer and settlement agent were true and correct as an anti-fraud measure. The GSE noted that such statements were included on previous versions of the disclosure required by Regulation X and are needed to deter fraud.

With respect to comments that the statement beneath the signature line as illustrated by proposed form H-25 would be confusing, the Bureau believes the statement is not confusing, because it pertains to the act of signing the disclosure and not the act of signing a promissory note or security instrument. The Bureau has considered the Small Business Review Panel's recommendation and believes, based on several rounds of consumer testing, that consumers understand the disclosure in proposed § 1026.38(s) to mean that they are not obligated to complete the loan transaction just because they signed the Closing Disclosure. Indeed, the Bureau further believes consumers will understand the proposed disclosure in § 1026.38(s) given that § 1026.19(f) requires delivery of the Closing Disclosure three days before consummation. As a result, the Bureau believes, as stated in the proposal, that the disclosure is appropriate. The statement as required by § 1026.38(s) reads: "By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form." Under § 1026.19(f), the act of signing the disclosure may take place days before the signature of the promissory note and security instrument. Even at the consummation or settlement of the transaction, the settlement agent may review the Closing Disclosure before the consumer executes the promissory note and security instrument. The consumer's signature signifies only receipt of the Closing Disclosure and the statement is clear that signing of the form in and of itself does not obligate the consumer to proceed with the loan transaction. In addition, the Bureau does not believe that use of the word "Applicant" under the signature line is confusing for the same reasons, and because it would be inaccurate to refer to the consumer as a borrower prior to executing the promissory note. The word "Applicant" reflects that the consumer is not yet obligated to proceed with the transaction simply by virtue of signing the Closing Disclosure. That is true whether the consumer is signing the Closing Disclosure at the closing table or three days before closing. Moreover, to the extent that creditors believe the signature line and accompanying statement are confusing, they may be omitted at the creditor's option under § 1026.38(s). For the reasons above, the Bureau declines to revise the statement required along with the signature line or the design of the signature line in form H-25. The Bureau is adopting § 1026.38(s) and comment 38(s)-1 as proposed.

With respect to consumers in rescindable transactions, the definition of consumer is the one provided in § 1026.2(a)(11) which does include a non-applicant co-owner of a principal dwelling in a transaction governed by §§ 1026.15 and 1026.23. As clarified by comment 17(d)-2, § 1026.17(d) requires the disclosures required by § 1026.19(f) to be given to each consumer who has the right to rescind under § 1026.23. Accordingly, because a non-applicant co-owner has the right of rescission under § 1026.23, the creditor would be required to deliver the Closing

Disclosure to each such non-applicant co-owner and do so separately from any other consumer to whom the Closing Disclosure is required to be delivered. To the extent that such consumers' names do not fit on the space allocated for a signature on form H-24, comment 37(n)-2 provides that an additional page may be added to the Closing Disclosure.

With respect to the GSE commenter's request for an anti-fraud statement, the purpose of the integrated disclosures is to promote the informed use of credit and more effective advance notice of settlement costs to enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. While deterring fraud is undoubtedly an interest of secondary market investors in residential mortgage loans, the Bureau is concerned that including such information would lead to information overload because it is not related to the consumer's understanding or evaluation of their loan terms and costs. Secondary market investors and creditors may request such a statement from consumers in a separate document, provided such document complies with the requirements and restrictions of § 1026.38, including the segregation requirements of § 1026.38(t).

For the reasons discussed and pursuant to the legal authority described above and in the proposal, the Bureau is adopting § 1026.38(s) substantially as proposed, with minor modifications for clarity and to conform to § 1026.37(n), and require that the statement disclosed with the signature line be above the signature line. The Bureau is adopting comment 38(s)-1 as proposed.

38(t) Form of Disclosures

As discussed above, the Bureau proposed to exclude transactions subject to proposed § 1026.19(f) from the coverage of § 1026.17(a) and (b). Consequently, the implementation of TILA sections 122(a) and 128(b)(1) in § 1026.17(a)(1), requiring that the disclosures be clear and conspicuous and that they be segregated from everything else, does not apply to the integrated disclosures set forth in § 1026.38 under this proposal. As described in the section-by-section analysis of proposed § 1026.37(o), the Bureau, pursuant to its implementation authority under TILA section 105(a), proposed to implement the statutory segregation and clear and conspicuous requirements of TILA sections 122(a) and 128(b)(1) for the disclosure required by proposed § 1026.38 in new § 1026.38(t). The Bureau stated its belief in the proposal that these requirements will 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 or her and avoid the uninformed use of credit.

38(t)(1) General Requirements

Similar to proposed § 1026.37(o)(1), proposed § 1026.38(t)(1) would have established the requirements that the disclosures required by § 1026.38 be clear and conspicuous, in writing, and grouped together, segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws. Proposed comment 38(t)-1 would have clarified that the clear and conspicuous standard requires that the disclosures be legible and in a readily understandable form. This guidance is adopted from existing comment 17(a)(1)-1. The comment would have clarified that proposed § 1026.37(o)(1) requires that the disclosures be grouped together, segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws. This proposed requirement would be stricter than the guidance found in existing comment 17(a)(1)-2, which provides that the disclosures may be grouped together and segregated from other information in a variety of ways other than a separate piece of paper.

The Bureau stated in the proposal that it recognized that, in certain credit sale and other non-mortgage, closed-end credit transactions, creditors include the disclosures required by § 1026.18 in the loan contract or some other document and ensure that they are grouped together and segregated by outlining them in a box or other means authorized by comment 17(a)(1)-2. However, as also described above in the discussion of § 1026.37(o), the Bureau stated its belief in the proposal that this approach is virtually never employed for mortgage credit, for which the new disclosures under §§ 1026.19(f) and 1026.38, rather than § 1026.18 disclosures, are required. For the reasons stated in that discussion, the Bureau believed that requiring the § 1026.38 disclosures to be delivered as a separate document does not present any significant new obligation that mortgage lenders do not already effectively observe and maximizes the benefits of the forms. The Bureau sought comment in the proposal, however, on whether there currently are transactions subject to § 1026.19(f) that may be burdened by the adoption of this requirement. Comments received in relation to this issue are discussed in the section-by-section analysis of § 1026.19(f).

Also, similar to § 1026.37(o)(1)(ii), proposed § 1026.38(t)(1)(ii) would have provided that the disclosures shall contain only the information required by § 1026.38(a) through (s) and that they generally shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-25. Proposed comment 38(t)-2 would have provided guidance on the treatment of balloon payment loans with leasing characteristics. The Bureau did not receive any comments regarding § 1026.38(t)(1) and thus is adopting § 1026.38(t)(1)(ii) and comments 38(t)(1)-1 and -2 substantially as proposed, with minor modifications for clarity. The Bureau is adopting § 1026.38(t)(1)(i) as revised to delete the requirement that the disclosures be on separate pages that are not commingled with any other documents or disclosures because the Bureau believes that requirement is redundant to the requirement that the disclosures be grouped together and segregated from everything else. Accordingly, final § 1026.38(t)(1)(i) as revised requires only that the disclosures to be grouped together and segregated form everything else.

38(t)(2) Headings and Labels

Similar to § 1026.37(o)(2), proposed § 1026.38(t)(2) would have provided that, wherever form H-25 designates the required master heading, heading, subheading, label, or similar designation for a disclosure as "estimated," that corresponding master heading, heading, subheading, label, or similar designation required by § 1026.38 must include the word "estimated," even if the provision requiring such heading, label, or similar designation does not contain the word. As noted in the proposal, many of the items that are required to be only good faith estimates when included in the § 1026.37 disclosures, in accordance with § 1026.19(e), will be actual terms and costs when stated in the § 1026.38 disclosures, as required by § 1026.19(f). As further noted in the proposal and above in the section-by-section analysis of § 1026.37(o), many of the disclosure items required by § 1026.38 cross-reference their counterparts in § 1026.37. To avoid confusion over which items must be designated as "estimates," the content provisions of § 1026.37 would not have included in any of the master headings, headings, subheadings, labels, and similar designations the word "estimated." Instead, § 1026.37(o)(2) effectively would have incorporated by reference the "estimated" designations reflected on form H-24 of appendix H to Regulation Z. Accordingly, proposed § 1026.38(t)(2) also would have incorporated by reference the "estimated" designations reflected on form H-25 of appendix H to Regulation Z. Proposed comment 38(t)(2)-1 would have provided guidance regarding the requirement to disclose certain amounts as estimated amounts based on the designations within form H-25.

A document preparation company requested that the Bureau revise § 1026.38(t)(2) to permit disclosure of an "e" to denote an estimate following certain disclosures on the Closing Disclosure for certain transactions where frequently changing interest rates could vary many of the amounts disclosed from what is stated on the Closing Disclosure. The commenter noted that the construction phase of construction-to-permanent loans typically have interest rates that change frequently and which could lead to significant changes to the amounts disclosed for the initial and projected payments, total of payments, total finance charge, annual percentage rate, and amount financed.

The Bureau does not believe that a special rule is required for disclosure of estimated figures in transactions with interest rates that change frequently, however, because the Closing Disclosure is designed to inform consumers of changes to their estimated payments after closing. Indeed, where a transaction has an adjustable interest rate, the Loan Terms table required by § 1026.38(b) would disclose to the consumer how soon the interest rate can adjust and how high the periodic payments could go. Moreover, the Projected Payments, Adjustable Payment and Adjustable Interest Rate tables would provide more information to consumers about the frequency of adjustment of their interest rate and how such changes in the interest rate could affect their periodic payment. In short, while it is true that many of the amounts disclosed on the Closing Disclosure will change after closing for adjustable rate transactions, the Bureau believes that the Closing Disclosure adequately informs consumers of those potential changes without any additional notations on the form.

The Bureau is aware that other disclosures provided under Regulation Z are labeled as estimates when information is unknown. However, the Bureau is concerned that labeling certain specific items on the Closing Disclosure as estimates may result in consumer confusion regarding the nature of the Closing Disclosure. In addition, the Closing Disclosure uses the term "estimated" in specific areas to inform the consumer when certain recurring costs may change in the future, such as future payments for taxes and property insurance; the intended effect of the term in such areas may be affected by more liberal use of that term in other places on the form. Further, the Bureau does not believe it is necessary to state that disclosures on the Closing Disclosure are estimates when they are based on the best information reasonably available, because the final rule requires that consumers receive revised disclosures with the actual terms if information changes that would have made a previous disclosure inaccurate. Under § 1026.19(f)(2)(i) and (ii), creditors must provide revised disclosures if information on disclosures provided under § 1026.19(f)(1)(i) becomes inaccurate; and consumers will receive by consummation corrected disclosures stating the actual terms of the transaction. In addition, pursuant to final § 1026.19(f)(2)(iii), consumers will receive corrected disclosures after consummation if a subsequent event changes an amount actually paid by the consumer. This approach is consistent with what the Bureau believes is the current practice under current Regulation X, which provides that the RESPA settlement statement must state the actual charges paid by the borrower and seller, and does not provide for estimates, even if the RESPA settlement statement is revised during settlement to reflect changes.

The Bureau is adopting § 1026.38(t)(2) substantially as proposed but, as it did for the corresponding provision in § 1026.37(o)(2), the Bureau is expanding § 1026.38(t)(2) to require the capital letter designations in the headings and labels on form H-25 to be disclosed, as applicable. The Bureau makes this revision to clarify that the capital letter designations shown before or after certain of the headings and labels on form H-25 are required, even though the specific provisions of the corresponding disclosures in § 1026.38 do not contain the initial capital letter. The Bureau is also revising the description of § 1026.38(t)(2) from "Estimated disclosures" to "Headings and labels." The Bureau is adopting § 1026.38(t)(2) as revised and comment 38(t)(2)-1 with modifications for clarity.

38(t)(3) Form

Similar to § 1026.37(o)(3), proposed § 1026.38(t)(3) also would have provided that, for a transaction that is a federally related mortgage loan, as defined in Regulation X, the disclosures must be made using form H-25 of appendix H to Regulation Z. As discussed in the proposal, certain closed-end consumer credit transactions are subject to the requirements of § 1026.19(f) but do not fit the Regulation X definition of "federally related mortgage loan." These include construction-only loans with terms of less than two years that do not finance the transfer of title to the consumer and loans secured by vacant land on which a home will not be constructed or placed using the loan proceeds within two years after settlement of the loan. *See* § 1024.5(b)(3) and (4). In addition, transactions subject to § 1026.19(f) but not subject to RESPA would include loans secured by non-residential real property, provided they are made primarily for a consumer purpose as required by § 1026.1(c)(1)(iv). *See* 12 CFR 1024.2, definition of "federally related mortgage loan," paragraph (1)(i) (requiring that the securing property be "residential real property").

As with transactions subject to § 1026.19(e), for such transactions that are subject to § 1026.19(f), because they are subject to TILA and are secured by real property, but that are not subject to RESPA, the Bureau stated in the proposal that it would not mandate the use of form H-25 as a standard form. TILA section 105(b) provides that nothing in TILA may be construed to require a creditor to use any model form or clause prescribed by the Bureau under that section.

Accordingly, proposed § 1026.38(t)(3) would have provided that, for transactions subject to § 1026.38 that are not federally related mortgage loans, the disclosures must be made with headings, content, and format substantially similar to form H-25 but does not mandate the use of that form. Consistent with TILA section 105(b), proposed comment 38(t)(3)-1 would have explained that, although use of the form as a standard form is not mandatory for such transactions, its use as a model form, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1). Similar to § 1026.37(o)(3)(iii), proposed § 1026.38(t)(3)(iii) also would have provided that the disclosures may be provided in electronic form, subject to compliance with the E-Sign Act. This provision parallels existing § 1026.17(a)(1).

As discussed in the section-by-section analysis of proposed § 1026.37(o)(3), the Bureau proposed the requirement that creditors use the standard form for federally related mortgage loans pursuant to RESPA section 4(a), as amended by the Dodd-Frank Act. 12 U.S.C. 2603(a). As discussed above, although the Dodd-Frank Act eliminated one reference in RESPA section 4(a) to a "standard" form, it left the other such reference in place, as well as another such reference in section 4(c). More notably, in amending section 4(a), Congress did not include an explicit prohibition of a mandatory-use form. For this reason, the Bureau does not believe that Congress intended to eliminate standard-form authority from RESPA section 4.

The Bureau also proposed the mandatory form pursuant to its authority in RESPA section 19(a) to prescribe such rules and regulations as may be necessary to achieve RESPA's purposes. 12 U.S.C. 2617(a). RESPA's purposes include the establishment of more effective advance disclosure to home buyers and sellers of settlement costs. 12 U.S.C. 2601(b)(1). The Bureau stated its belief in the proposal, based on consumer testing results, that the purpose of more effective advance disclosure of settlement costs is better achieved if all lenders provide those disclosures in a standardized format. In the Bureau's consumer pre-proposal testing, participants were able to compare the costs disclosed on the Loan Estimate and Closing Disclosure more easily when they were provided in a format that matched closely. In addition, as stated in the proposal, participants better understood the costs disclosed in the Closing Disclosure after gaining experience using the matching format of the Loan Estimate. Further, the Bureau stated its belief in the proposal that disclosure of settlement costs alone, without the context provided by the credit terms, is far less effective in aiding consumer understanding of the transaction. This is consistent with HUD's rationale for including credit terms in the required RESPA GFE, in HUD's 2008 RESPA Final Rule. *See* 73 FR 68204, 68214-15 (Nov. 17, 2008). This is also the stated purpose of the integrated disclosure under RESPA section 4(a).

Accordingly, as stated in the proposal, the Bureau is authorized under RESPA section 19(a) to require the standard form for the disclosure of all of the information it contains, both settlement costs and credit terms alike. The Bureau further stated in the proposal that it was using this authority to require a standard form for federally related mortgage loans under § 1026.38(t)(3)(i). As described above, for transactions subject to § 1026.19(f), the Bureau is using its authority under TILA section 105(b) to establish a model disclosure for credit transactions subject to TILA and not RESPA. For a detailed description of the Bureau's implementation of these rules and use of TILA section 105(a) authority, see the section-by-section analysis of § 1026.37(o)(3).

As discussed in the proposal, during the Small Business Review Panel, several settlement agents requested that the Bureau require the use of a standard integrated disclosure form. The settlement agents stated that if the forms were only models, creditors would establish inconsistent requirements, which would be more expensive for small settlement agents. *See* Small Business Review Panel Report at 19. Feedback requesting both standard and model forms was also submitted by industry trade associations in response to the Small Business Review Panel Outline. In consideration of the recommendation of the Small Business Review Panel, the Bureau sought comment in the proposal on the advantages, such as cost-saving benefits, and disadvantages of requiring a standard form for the Closing Disclosure for federally related mortgage loans and model forms for other credit transactions subject to proposed § 1026.19(f). *Id.* at 28. The comments received on that topic are discussed in the section-by-section analysis of § 1026.37(o)(3). For the reasons discussed with respect to § 1026.37(o)(3), the Bureau is adopting § 1026.38(t)(3)(ii) and (iii) as proposed and is adopting § 1026.38(t)(3)(i) and comment 38(t)(3)-1 substantially as proposed but with minor modifications for clarity.

A document preparation company requested that the Bureau permit deviation from the required format for disclosures to be optimized to show on a computer screen or a tablet. For the reasons discussed in the section-by-section analysis of § 1026.37(o)(3)(iii), the Bureau declines to permit such deviations at the present time.

38(t)(4) Rounding

Similar to § 1026.37(o)(4), proposed § 1026.38(t)(4) would have required certain numerical amounts on the Closing Disclosure to be rounded. The Bureau proposed this requirement for the same reasons as the requirements of § 1026.37(o)(4), namely to reduce information overload, aid in consumer understanding of the transaction, prevent misconceptions regarding the accuracy of certain estimated amounts (*e.g.*, estimated property costs over the life of the loan), and ensure a meaningful disclosure of credit terms. For a detailed description of the Bureau's use of its authority under TILA section 105(a), RESPA section 19(a), and section

1405(b) of the Dodd-Frank Act in requiring rounded numbers on the integrated disclosures, see the section-by-section analysis of proposed § 1026.37(o)(4). Proposed comment 38(t)(4)-1 would have clarified that consistent with § 1026.2(b)(4) all numbers are to be disclosed as exact numbers, unless required to be rounded by proposed § 1026.38(t)(4). Proposed comment 38(t)(4)-2 would have referred to commentary to § 1026.37(o)(4) for guidance.

Comments received related generally to rounding numbers on the integrated disclosures are discussed in the section-by-section analysis of § 1026.37(o)(4). The Bureau did not receive any comments related specifically to the rounding provisions in § 1026.38(t)(4). Because the Bureau continues to believe that the rounding of certain numbers disclosed on the Closing Disclosure will effectuate the purposes of TILA and RESPA, the Bureau is adopting § 1026.38(t)(4)(i), (t)(4)(ii) and comment 38(t)(4)-2 substantially as proposed, except for modifications for clarity and technical revisions to § 1026.38(t)(4)(ii) to correct cross-references and to § 1026.38(t)(4)(i)(C) to add the alternative Calculating Cash to Close table under § 1026.38(e) and to revise the subheading as finalized in the Calculating Cash to Close table under § 1026.38(e) and (i) and to § 1026.38(t)(4)(i)(E) to revise a cross-reference.

The Bureau is also adding § 1026.38(t)(4)(iii) to provide, consistent with § 1026.37(o)(4)(i)(B), that the dollar amount required to be disclosed by § 1026.38(b) pursuant to § 1026.37(b)(1), for the loan amount, shall be disclosed as an exact number, except that decimal places shall not be disclosed if the amount of cents is zero. The Bureau believes, based on its consumer testing, that disclosing the loan amount without cents if the amount of cents is zero, will be easier for a consumer to understand and reduce the potential for information overload. The Bureau's Quantitative Study used prototype Closing Disclosures that disclosed the loan amount on page 1 in this manner, and the consumer participants using the Bureau's integrated disclosures were able to identify the loan amount on the Closing Disclosure statistically significantly better than those using the current disclosures. *See* Kleimann Quantitative Study Report at 54-55. The Bureau is also revising comment 38(t)(4)-1, which provides general guidance regarding rounding, for clarity and to reflect the change adopted in § 1026.38(t)(4)(iii).

38(t)(5) Exceptions

The Bureau stated its belief in the proposal that it must specify the changes to the format of the Closing Disclosure that are required and permissible, to ensure the disclosures provided to consumers convey the information required by § 1026.38 in a clear, understandable, and effective manner for consumers. Accordingly, pursuant to its authority under RESPA section 19(a), TILA section 105(a), and section 1032(a) of the Dodd-Frank Act, the Bureau proposed § 1026.38(t)(5) to provide for a specific list of exceptions to the format of the Closing Disclosure, as illustrated in form H-25 of appendix H to Regulation Z. For a detailed description of the Bureau's use of its authority under TILA section 105(a), RESPA section 19(a), and section 1405(b) of the Dodd-Frank Act in providing for a list of exceptions to the required format, see the section-by-section analysis of proposed § 1026.37(o)(5).

The requirements of proposed § 1026.38(t)(5) would have mirrored those of § 1026.37(o)(5), with appropriate differences for the different format, timing, and use of the two disclosures. Like § 1026.37(o), proposed § 1026.38(t)(5)(i) would have required modification to indicate the frequency of payment or applicable unit-period for the transaction; proposed § 1026.38(t)(5)(ii) would have permitted lender credits to be deleted from the Cash to Close disclosure required by proposed § 1026.38(d); proposed § 1026.38(t)(5)(iii) would have permitted the addition of administrative information in a certain space on the form; and proposed

§ 1026.38(t)(5)(ix) would have permitted translation of the form into languages other than English. In contrast to § 1026.37(o)(5)(iii), proposed § 1026.38(t)(5) would not have permitted a creditor to insert a logo or slogan on the Closing Disclosure with the creditor information required by proposed § 1026.38(a)(4)(iii). Comments received related to § 1026.38(t)(5)(i), (ii), (iii), and (ix) are discussed in the section-by-section analysis of the corresponding paragraph in § 1026.37(o)(5).

While § 1026.37(o)(5) does not permit the deletion of lines from the form H-24 of appendix H to Regulation Z for the information required to be disclosed by § 1026.37(f) and (g), proposed § 1026.38(t)(5)(iv) would have permitted the deletions of lines in certain circumstances from proposed form H-25 of appendix H to Regulation Z. Section 1026.37(o) does not permit the use of more than one page for closing cost details on the Loan Estimate, except for the services for which a consumer can shop under § 1026.37(f)(3) which may be placed on an additional page at the end of the Loan Estimate under the circumstances permitted by § 1026.37(o)(5)(viii). In contrast, proposed § 1026.38(t)(5)(v) would have permitted the expansion of the information required by § 1026.38(f), (g), and (h) over two pages in certain circumstances to accommodate the closing costs and itemization required on the Closing Disclosure, provided that the Loan Costs and Other Costs under § 1026.38(f) and (g), respectively, are each disclosed on a single page.

The Bureau stated its understanding in the proposal that the Closing Disclosure may be provided to parties other than consumers, unlike the Loan Estimate. In light of privacy considerations that may arise, proposed § 1026.38(t)(5)(vi) would have permitted the creditor or settlement agent preparing the disclosure to leave certain information regarding the consumer’s transaction blank in the disclosure provided to the seller and vice versa. Similarly, proposed

§ 1026.38(t)(5)(vii) would have permitted the creditor or settlement agent preparing the disclosure to delete certain information regarding the consumer's transaction from the disclosure provided to a seller or third party. For example, proposed § 1026.38(t)(5)(vii) would have permitted the disclosures regarding the consumer's credit transaction required by § 1026.38(l) through (s) to be deleted from the form provided to a seller. An illustration of such form was provided in proposed form H-25(I) of appendix H to Regulation Z. Further, considering that some credit transactions may not involve sellers, proposed § 1026.38(t)(5)(viii) also would have permitted use of a modified version of the form for credit transactions that do not involve a seller, such as a refinance transaction, which was illustrated in proposed form H-25(J). Proposed § 1026.38(t)(5)(x) would have permitted the addition of a page for customary recitals and information used locally in real estate settlements.

Proposed comment 38(t)(5)-1 would have clarified that any changes not specified in proposed § 1026.38(t)(5) may affect the substance, clarity, or meaningful sequence of the disclosure and cause the creditor to lose protection from civil liability under TILA. Similar to comments 37(o)(t)-2 through -5, proposed comments 38(t)(5)-2 through -4 would have provided guidance regarding manual completion of the form, modifications to accommodate additional contact information, and the addition of signature lines permitted by § 1026.38(t)(5). In addition, because certain disclosures required by proposed § 1026.38 would have been permitted by proposed § 1026.38(t) to be disclosed over two pages, even though they are illustrated on form H-25 of appendix H to Regulation Z as disclosed on one page, proposed comment 38(t)(5)-6 would have permitted modifications to the page number references illustrated on form H-25 accordingly. Proposed comments 38(t)(5)(iv)-1 and 38(t)(5)(v)-1 and -2 would have provided clarification about permissible changes to the required disclosure of closing cost details when the space provided on form H-25 does not accommodate all of the costs required to be disclosed. Proposed comments 38(t)(5)(viii)-1 and -2 would have provided clarifications regarding modifications permitted for transactions without a seller. Lastly, proposed comment 38(t)(5)(x)-1 would have provided clarification regarding adding an additional page for customary recitals and information typically used locally in real estate settlements.

A national title insurance company suggested that the Bureau expressly prohibit the insertion of a logo or slogan on the Closing Disclosure. Several trade associations representing mortgage lenders requested guidance on how to disclose closing costs on an additional page and asked whether that additional page could be divided into two parts in order to keep items within categories grouped together. The Bureau received comments from two document preparation companies requesting guidance on when additional pages were permitted to be added to both the Loan Estimate and the Closing Disclosure.

With respect to the comment that the Bureau should expressly prohibit insertion of a logo or slogan, § 1026.38(t)(1)(ii) states that disclosures shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-25, except as provided in § 1026.38(t)(5). Accordingly, because the insertion of a logo or slogan is not listed in § 1026.38(t)(5), it is prohibited by § 1026.38(t)(1)(ii).

Regarding the disclosure of closing cost details on an additional page, the intent of proposed § 1026.38(t)(5)(v) was to keep the disclosures required by § 1026.38(f), (g), and (h) grouped together, even when disclosed over two pages. Specifically, proposed § 1026.38(t)(5)(iv) and (v) would have required that when disclosed over two pages, the information required by § 1026.38(f) be disclosed on a separate page from § 1026.38(g) and that the information required by § 1026.38(h) be disclosed on the same page as the information required by § 1026.38(g). An example of the disclosure of closing costs over two pages pursuant to proposed § 1026.38(t)(5)(v) was included as form H-25(H) in the proposal.

The Bureau believes, from its review of the comments received regarding proposed § 1026.38(t)(5)(v) and proposed comment 38(t)(5)-5, that commenters were confused about how these provisions worked together. Accordingly, the Bureau is revising proposed § 1026.38(t)(5)(v) to refer to disclosure of the Closing Cost Details "over two pages," rather than on "an additional page." The Bureau acknowledges that it used the term "additional page" in other sections of the proposal to describe a page added to the end of the Loan Estimate or Closing Disclosure as permitted in limited circumstances. The Bureau is also reorganizing proposed § 1026.38(t)(5)(iv) and (v) into one paragraph, finalized as § 1026.38(t)(5)(iv), titled "Closing Cost Details" and separated into two sub-paragraphs to improve clarity regarding the interaction of these two requirements.

Final § 1026.38(t)(5)(iv)(A) addresses adding or deleting line numbers in the Closing Cost Details table while final § 1026.38(t)(v)(iv)(B) addresses disclosing closing costs over two pages in that table if the addition or deletion of line numbers under § 1026.38(t)(5)(iv)(A) is insufficient to make all required disclosures. This reorganization is intended to clarify that the two permissible modifications to the Closing Cost Details table work together. This reorganization is also intended to signify that the disclosure of the information required by § 1026.38(f), (g), and (h) over two pages is unique to the Closing Cost Details section and to distinguish it from the limited permission to add additional pages to the end of the Closing Disclosure as clarified by comment 38(t)(5)-5. The Bureau believes that the reorganized § 1026.38(t)(5)(iv) will alleviate the confusion over the special rules related to the Closing Cost

Details. To correspond to these changes, the Bureau is renumbering proposed comment 38(t)(5)(v)-1 as comment 38(t)(5)(iv)-2, revising the reference to § 1026.38(t)(5)(v)(B) and describing disclosure of closing cost details over two pages rather than on an additional page. The Bureau is also renumbering proposed comment 38(t)(5)(v)-2 as comment 38(t)(5)(iv)-3, noting that when closing cost details are disclosed over two pages, the pages should be numbered 2a and 2b, and adding a reference to form H-25(H) for an example of this disclosure.

With respect to the requests for guidance regarding additional pages, the Bureau notes that if an additional page is permitted to be added to the Closing Disclosure for a required disclosure that does not fit in the space allocated for it on form H-25, it is specified in the specific sub-section of § 1026.38 or its associated commentary. Proposed comment 38(t)(5)(x)-1 would have provided guidance regarding the permission to add an additional page for customary recitals and information. The Bureau is adopting comment 38(t)(5)(x)-1 as proposed, but is renumbering it as comment 37(t)(5)(ix)-1 to correspond with renumbered § 1026.38(t)(5)(ix).

The Bureau is adopting § 1026.38(t)(5)(viii) substantially as proposed, except that it is renumbered as final § 1026.38(t)(5)(vii), the name of the table referred to in § 1026.38(t)(5)(vii)(B) is being revised from "Disbursements to Others" to "Payoffs and Payments," with minor modifications for clarity, and the Bureau is noting that the modifications in § 1026.38(t)(v)(vii) are permitted only when the alternative tables are disclosed pursuant to § 1026.38(d)(2) and (e). The Bureau conducted consumer testing of revised disclosures for transactions without sellers after issuing the proposal and the heading "Payoffs and Payments" performed better with consumers than "Distributions to Others." *See* Kleimann Post-Proposal Testing Report at 71. Accordingly, the Bureau is making this modification to utilize plain language and to aid consumer understanding of the transaction, consistent with the purposes of

TILA and RESPA. In addition, proposed § 1026.38(t)(5)(viii)(C) is deleted, as such modifications are not permitted because the alternative Calculating Cash to Close table under § 1026.38(e) is required to use this modification. Proposed § 1026.38(t)(5)(viii)(D) is adopted as final § 1026.38(t)(5)(vii)(C), with modifications for clarity. The Bureau is also revising comment 38(t)(5)(viii)-1 for the same reason, to clarify that the alternative tables pursuant to § 1026.38(d)(2) and (e) are required to be disclosed to use the modification permitted under § 1026.38(t)(5)(vii), which comment is renumbered as 38(t)(5)(vii)-1. The Bureau is renumbering proposed comment 38(t)(5)(viii)-2 as final comment 38(t)(5)(vii)-2 and is revising it to note that the label "Appraised Prop. Value" should be "Estimated Prop. Value" when there is no appraisal in a transaction without a seller for the reasons discussed in the section-by-section analysis of § 1026.38(a)(3)(vii).

The Bureau did not receive any comments regarding § 1026.38(t)(5)(i) or (ii) and is adopting them as proposed except for a technical revision to § 1026.38(t)(5)(ii) to revise a cross-reference. For the reasons discussed in the section-by-section analysis of § 1027.37(o)(5)(v), the Bureau is revising § 1026.38(t)(5)(iii) to permit the disclosure of administrative information centered at the bottom of each page of the Closing Disclosure, rather than in the top and right of only the first page as proposed. The Bureau is revising proposed § 1026.37(t)(5)(iv) and (v) as described above and adopting them as renumbered § 1026.37(t)(5)(iv)(A) and (B). The Bureau did not receive any comments on proposed § 1026.38(t)(5)(vi) and (vii) and is adopting them as proposed except that they are renumbered as § 1026.39(t)(5)(v) and (vi), respectively. The Bureau is adopting proposed § 1026.38(t)(5)(viii) for transactions without a seller as revised for the reasons discussed above and renumbered as § 1026.38(t)(5)(vii). The Bureau did not receive any comments on proposed § 1026.38(t)(5)(x) and is adopting it as proposed but renumbered as

§ 1026.38(t)(5)(ix).

Comments regarding proposed § 1026.38(t)(5)(ix), which would have permitted creditors to translate the Closing Disclosure into other languages, are discussed in the section-by-section analysis of § 1026.37(o)(5)(iv). The Bureau is finalizing proposed § 1026.38(t)(5)(ix) substantially as proposed, except that it is renumbering it as § 1026.38(t)(5)(viii) and is modifying the provision to provide clarity regarding the modifications permitted to form H-25 to accommodate the translation into a language other than English. Final § 1026.38(t)(5)(viii) permits creditors to modify form H-25 to the extent that translation prevents the headings, headings, labels, designations, and required disclosure items under § 1026.38 from fitting in the space provided on form H-25. The Bureau is also adding comment 38(t)(5)-7 to provide additional guidance regarding the modifications to form H-25 that are permitted to accommodate translation of the Closing Disclosure into languages other than English.

The Bureau did not receive comments on proposed comments 38(t)(5)-1, -2, -4, and -6 and is adopting them as proposed, except that comment 38(t)(5)-1 is revised slightly for clarity and comment 38(t)(5)-2 is revised for clarity to delete the reference to the electronic, machine readable format requirement proposed as § 1026.25 because the proposed requirement to retain records in an electronic, machine readable format is not being adopted in this final rule. The Bureau is also removing proposed comment 38(t)(5)-3 because the guidance provided in that comment has been incorporated into final comment 38(r)-1. The Bureau is adopting proposed comments 38(t)(5)-5 with respect to additional pages as revised for the reasons discussed above. The Bureau is adopting proposed comments 38(t)(5)(iv)-1 and 38(t)(5)(v)-1 and -2 with respect to Closing Cost Details as revised for the reasons discussed above and renumbered as comments 38(t)(5)(iv)-1, -2, and -3. The Bureau is adopting proposed comments 38(t)(5)(viii)-1 substantially as proposed with a minor modification for clarity but renumbered as 38(t)(5)(vii)-1. The Bureau is adopting proposed comment 38(t)(5)(viii)-2 with respect to transactions without a seller as revised for the reasons discussed above and renumbered as comment 38(t)(5)(vii)-2. The Bureau is adopting proposed comment 38(t)(5)(x)-1 as proposed except that it is renumbered as comment 38(t)(5)(ix)-1. The Bureau is also adding comment 38(t)(5)-3 to provide additional guidance regarding the modification of unit-periods disclosed on the Closing Disclosure, and to clarify that the term "unit-period" as used in § 1026.38 has the same meaning as in appendix J to Regulation Z.

Section 1026.39 Mortgage Transfer Disclosures

TILA section 131(g) and § 1026.39 of Regulation Z currently require the creditor that is the new owner or assignee of a mortgage loan to notify the consumer of the sale or transfer of a mortgage loan no later than 30 days after the date on which the new owner/assignee acquired the loan.[304] These requirements apply to open- and closed-end consumer credit transactions that are secured by consumers' principal dwellings.[305] Section 1414(d) of the Dodd-Frank Act amended TILA section 129C to impose additional disclosure requirements on new owners or assignees of residential mortgage loans. Specifically, section 129C(h) requires a person who becomes a creditor of an existing "residential mortgage loan" to disclose the following regarding partial payments: (i) the creditor's policy regarding the acceptance of partial payments; and (ii) if they are accepted, how such payments will be applied to the mortgage loan, and if such payments will

[304] 75 FR 58489 (Sept. 24, 2010). The Bureau restated § 226.39 as § 1026.39. 76 FR 79768 (Dec. 22, 2011).
[305] On May 20, 2009, the Helping Families Save Their Homes Act of 2009 was signed into law. Public Law 111-22, 123 Stat. 1632 (2009). Section 404(a) of the Helping Families Save Their Homes Act of 2009 amended TILA to establish a new requirement in TILA section 131(g) for notifying consumers of the sale or transfer of their mortgage loans for consumer credit transactions secured by the principal dwelling of a consumer. The creditor that is the new owner or assignee of the mortgage loan must provide the required disclosures no later than 30 days after the date on which it acquired the loan. 15 U.S.C. 1641(g). The Board implemented TILA section 131(g) in Regulation Z as § 226.39.

be placed in escrow. 15 U.S.C. 1639c(h). This requirement is in addition to the identical disclosure required before settlement that was added to TILA by section 1414(d) of the Dodd-Frank Act, which the Bureau proposed to implement in proposed § 1026.38(l)(5) pursuant to its authority under TILA section 105(a), as described above.

These new section 1414(d) partial payment disclosures apply to "residential mortgage loans." Section 1401 of the Dodd-Frank Act amended TILA section 103 to define "residential mortgage loan" as any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, or residential real property that includes a dwelling. "Residential mortgage loan" specifically excludes a consumer credit transaction under an open credit plan or, for purposes of certain sections of TILA, including TILA section 129C, timeshare plans described in section 101(53D) of title 11 of the United States Code. 15 U.S.C. 1602(cc)(5).

Coverage and Timing of the Partial Payment Policy Disclosure

The disclosures required by new TILA section 129C(h) and pre-existing section 131(g) must be provided in connection with the transfer or assignment of a mortgage loan generally. However, the disclosures apply to different categories of mortgage loans. The requirements in TILA section 131(g) apply to both closed-end credit transactions and open-end home equity lines of credit that are secured by a consumer's principal dwelling. In contrast, TILA section 129C(h) applies only to closed-end credit. However, TILA section 129C(h) is not limited to closed-end loans secured by the consumer's principal dwelling. Rather, section 129C(h) applies to closed-end credit secured by a dwelling or residential real property with a dwelling.

Sections 131(g) and 129C(h) also differ on the timing requirements for disclosures. TILA section 131(g) expressly provides that the disclosure must be provided no later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned. TILA section 129C(h), on the other hand, simply provides that a new creditor of an existing residential mortgage loan must disclose its partial payment policy at the time the person "becomes a creditor." Thus, TILA section 129C(h) requires the disclosure when the person acquires the loan.

The Bureau stated its belief in the proposal that combining and harmonizing the disclosures required on new ownership and partial payment policies would promote the informed use of credit by consumers and facilitate compliance by persons covered by these requirements. The proposal would have combined the partial payment policy disclosure required after consummation with the mortgage loan transfer disclosure currently required by § 1026.39. The combined disclosure would have been provided to consumers no later than 30 days after the loan was sold or transferred. The proposal would also have broadened the scope of § 1026.39 to require the loan transfer disclosure for credit transactions secured by all dwellings, rather than principal dwellings only. The Bureau believed the disclosures regarding the identity of a consumer's new creditor, and the new creditor's partial payment policy, would be just as useful to a consumer whose closed-end credit transaction is secured by a second or vacation home as it would to a consumer whose closed-end loan is secured by a principal dwelling. In addition, the Bureau stated that it believed that adjustment of the scope of § 1026.39 to include closed-end credit transactions secured by a dwelling would facilitate compliance. Covered persons would not have to determine whether and which disclosures would be triggered when a closed-end transaction secured by a dwelling is transferred.

The Bureau also proposed to extend the scope of § 1026.39 to include closed-end credit transactions subject to proposed § 1026.19(f) (*i.e.*, closed-end transactions secured by real estate, other than reverse mortgage transactions subject to § 1026.33), as well as closed-end transactions secured by a dwelling. This adjustment would have harmonized the coverage of the mortgage loan transfer disclosure, the post-consummation partial payment policy disclosure, and the pre-consummation partial payment policy disclosure which extends to closed-end transactions secured by real estate but not a dwelling. The Bureau explained that applying the pre- and post-consummation partial payment policy disclosures to the same loans would promote the informed use of credit, because consumers who receive the disclosure before consummation would be informed if the policy has changed with the new ownership of the loan. In addition, the Bureau stated that it believed disclosures regarding the identity of a consumer's new creditor, and the new creditor's partial payment policy, would be just as useful to a consumer whose closed-end consumer credit transaction is secured by real estate that does not include a dwelling, or non-residential real estate, as it would to a consumer whose closed-end loan is secured by a dwelling.

This proposed adjustment to the scope of § 1026.39 would not have excluded reverse mortgage transactions subject to § 1026.33, as such transactions are not currently excluded from coverage under § 1026.39 generally. However, as discussed below in the section-by-section analysis of § 1026.39, the Bureau proposed to exclude reverse mortgage transactions subject to § 1026.33 from the requirement to disclose a partial payment policy in proposed § 1026.39(d)(5). In addition, the proposal's scope would not have excluded credit transactions relating to timeshare plans as described in 11 U.S.C. 101(53D), even though such timeshare transactions are excluded from the definition of "residential mortgage loan" under TILA section 103. The Bureau stated that it believed a new creditor's partial payment policy would be just as useful to a consumer whose closed-end credit transaction is secured by such a timeshare plan as to a consumer of a principal-dwelling secured transaction. It noted that timeshare transactions would generally be covered by proposed § 1026.19(f) as transactions secured by real estate.

The Bureau proposed the adjustments discussed above pursuant to its authority under TILA section 105(a) to effectuate the purposes of TILA and Regulation Z and facilitate compliance with the statute. The Bureau stated in the TILA-RESPA Proposal its belief that this adjustment effectuates the purposes of TILA under TILA section 102(a), because it would ensure meaningful disclosure of credit terms to consumers and facilitate compliance with the statute. In addition, the Bureau stated in the proposal that it believed, consistent with section 1032(a) of the Dodd-Frank Act, this adjustment would ensure that the features of consumer credit transactions secured by real property 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. Further, the Bureau proposed this modification of the disclosure requirements for residential mortgage loans based on its authority under Dodd-Frank Act section 1405(b), as it believed the modification would improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and would be in the interest of consumers and in the public interest.

39(a) Scope

For the reasons discussed above, the Bureau proposed amendments to § 1026.39(a) to expand the coverage of the disclosures required when ownership of a mortgage loan is transferred to closed-end credit transactions secured by a dwelling or real property. The Bureau proposed to retain the scope for open-end credit transactions to those secured by the consumer’s principal dwelling.

The Bureau did not propose to change the scope of the term “covered person” under § 1026.39(a)(1). When the Board issued § 1026.39 to implement TILA section 131(g), it applied the notice requirements to "covered persons," rather than "creditors" as defined under TILA and Regulation Z.[306] The Board took this action, noting that section 131(g) requires notices to be provided by a "creditor that is the new owner or assignee of the debt."[307] The Board stated that Congress did not intend the word "creditor" in section 131(g) to have the same meaning as "creditor" under TILA and Regulation Z.[308] The term "creditor" generally refers to a person to whom the credit obligation is initially made payable and that regularly engages in extending consumer credit. 15 U.S.C. 1602(g); 12 CFR 1026.2(a)(17). The Board concluded that "to give effect to the legislative purpose, the term 'creditor' in Section 404(a) must be construed to refer to the owner of the debt following the sale, transfer or assignment, without regard to whether that party would be a 'creditor' for other purposes under TILA or Regulation Z."[309]

Similar to section 131(g), the post-consummation disclosure requirement of TILA section 129C(h) applies to "a person becoming a creditor with respect to an existing residential mortgage loan."[310] The Bureau stated in the proposal that to give effect to the legislative purpose of section 1414(d) of the Dodd-Frank Act, the post-consummation disclosure requirement of TILA section 129C(h) should apply without regard to whether the person would be a "creditor" under TILA and Regulation Z for the same reasons cited by the Board in implementing TILA section 131(g).[311] For these reasons, the Bureau proposed to retain the term "covered person" under § 1026.39(a)(1) and its definition.

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[306] *Id.*
[307] Public Law 111-22, § 404(a); 15 U.S.C. 1641(g).
[308] 75 FR 58489, 58490-1.
[309] *Id.*
[310] 15 U.S.C. 1639c(h).
[311] 75 FR 58490-91.

The Bureau did not receive comments on proposed § 1026.39(a). Accordingly, the Bureau is adopting the amendments to § 1026.39(a) as proposed based on the authority, and for the reasons stated in the proposal.

39(d) Content of Required Disclosures

As discussed above, the Bureau stated in the proposal that it believed the adjustment to the scope of § 1026.39 would promote the informed use of credit and facilitate compliance with the statute. The Bureau proposed amendments to § 1026.39(d) to add the additional partial payment policy disclosure requirement of TILA section 129C(h) in new § 1026.39(d)(5). Pursuant to its implementation authority under TILA Section 105(a), the Bureau proposed to integrate the timing of this disclosure requirement with the disclosure required by TILA section 131(g). The Bureau stated in the proposal that it believed consumers may be better informed regarding the transfer of ownership of their mortgage loans if the required disclosures integrated the information applicable to the new creditor into one single disclosure, rather than consumers having to receive separate mailings at different times. In addition, the Bureau stated its belief that, consistent with section 1032(a) of the Dodd-Frank Act, the integration of these disclosure requirements would ensure that the features of consumer credit transactions secured by real property 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.

The proposed amendments to § 1026.39(d) would have also required the mortgage transfer disclosure for credit transactions that are mortgage loans for purposes of § 1026.39, except that the partial payment policy disclosure under proposed § 1026.39(d)(5) would only have been required for mortgage loans that are closed-end consumer credit transactions secured by a dwelling or real property other than reverse mortgage transactions subject to § 1026.33. The Bureau believed that this integrated mortgage transfer disclosure would also facilitate compliance with the statute. Covered persons would have to analyze the timing requirements and scope of only one transfer disclosure, rather than two separate disclosures for one transfer of a mortgage loan. The Bureau stated that it would not require the partial payment policy disclosure under proposed § 1026.39(d)(5) for open-end credit transactions and closed-end reverse mortgage transactions subject to § 1026.33. The partial payment policy disclosure required by TILA section 129C(h) is not required for open-end credit transactions. The pre-consummation partial payment policy disclosure set forth in proposed § 1026.38(l)(5) for loans subject to proposed § 1026.19(f) would not be required for closed-end credit reverse mortgage transactions subject to § 1026.33. Reverse mortgage transactions do not require consumers to make regular periodic payments to the creditor. Requiring the disclosure in these transactions would not have been practical. The Bureau stated in the proposal that it believed excluding reverse mortgage transactions from the partial payment policy disclosure in § 1026.39(d)(5) would be appropriate and facilitate compliance with the statute.

The proposed amendments also would have added comment 39(d)-2, which would have clarified that the partial payment policy disclosure is required only for closed-end mortgage loans secured by a dwelling or real property, other than reverse mortgage transactions subject to § 1026.33. Proposed comment 39(d)(5)-1 would have clarified that covered persons are permitted to use the format for the disclosure that is illustrated in proposed form H-25 of appendix H to Regulation Z for the information required to be disclosed by proposed § 1026.38(l)(5), with appropriate modifications that do not affect the substance, clarity, or meaningful sequence of the disclosure.

The Bureau received one comment on the amendments to § 1026.39(d) from a GSE, which also provided comments to the Bureau's proposed pre-consummation partial payment policy disclosure set forth in § 1026.38(l)(5). The GSE opposed the proposed requirement to make persons subject to § 1026.39 provide the partial payment policy disclosure required by TILA section 129C(h) at the time when the ownership of a mortgage loan is transferred. It stated that the loan servicer, not the loan purchaser, such as a mortgage investor, decides whether or not to accept partial payments.

The GSE commenter stated that it believed consumers would likely be frustrated and confused if they received information about the acceptance of partial payments from an entity, such as an investor, that is not capable of accepting partial payments. The GSE commenter requested that the Bureau require that servicers, instead of "covered persons" under § 1026.39, provide the partial payment policy notice in a separate transmittal. The GSE commenter further suggested limiting the requirement to provide the partial payment policy notice to situations where the servicer has a policy of not accepting any partial payments, so as to avoid the confusion that may arise from any truncated description of the servicer's policy. The Bureau did not receive comments on the other aspects of the proposed amendments to § 1026.39(d) and related commentary.

As discussed above in the section-by-section analysis of § 1026.38(l)(5), the Bureau recognizes that the ownership of a mortgage loan post-consummation and the servicing of the loan can be bifurcated. Additionally, the transfer of a mortgage loan's ownership may not coincide with the transfer of the loan's servicing rights. Although collecting and allocating payments are typically the duties of a servicer, TILA section 129C(h) clearly establishes a disclosure obligation on the new creditor of an existing mortgage loan. For the reasons discussed, the Bureau interprets the reference to “creditor” in TILA section 129C(h) to mean the owner of the loan. Regulation Z currently implements the same reference in TILA section 131(g) to “creditor” to mean the owner of the loan. The Bureau believes that integrating the partial payment policy disclosure with the existing mortgage transfer disclosures required by current § 1026.39 benefits consumers and persons subject to § 1026.39.

For the reasons discussed above, the Bureau is finalizing the amendments to § 1026.39(d) and its commentary substantially as proposed, with revisions to enhance clarity. The Bureau is adopting the amendment to current § 1026.39(d) as proposed, which provides that the partial payment policy disclosure required by § 1026.39(d)(5) is not required for open-end credit transactions and closed-end credit reverse mortgage transactions subject to § 1026.33. The final rule adds the additional partial payment policy disclosure requirement of TILA section 129C(h) to the disclosures required by current § 1026.39(d)(5). In situations where the servicing of a mortgage loan transfers to a covered person upon such covered person becoming a new creditor with respect to the loan, the covered person will have to disclose whether it accepts partial payments in accordance with final § 1026.39(d)(5). If the covered person becoming a new creditor will not also be the servicer, the new creditor will have to make arrangements with the servicer to ensure that the consumer receives the disclosures required by § 1026.39(d)(5).

As discussed above, the post-consummation partial payment policy disclosure requirement of TILA section 129C(h) is identical to the partial payment policy disclosure required before consummation. The Bureau is adopting the partial payment policy disclosure required before consummation in § 1026.38(l)(5) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b), as described above in the section-by-section analysis of § 1026.38(l)(5). For reasons discussed in the section-by-section analysis of § 1026.38(l)(5), the Bureau is revising the disclosures proposed in § 1026.38(l)(5) in adopting that section. Accordingly, the Bureau is adopting § 1026.39(d)(5), and comments 39(d)-2 and 39(d)(5)-1 substantially as proposed, to conform the disclosures in final § 1026.39(d)(5) to the disclosures in § 1026.38(l)(5).

The Bureau adopts the amendments to § 1026.39(d) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau believes that consumers will be better informed regarding the transfer of ownership of their mortgage loans if the required disclosures integrate the information applicable to the new creditor into one single disclosure provided at one time. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the integration of these disclosure requirements would ensure that the features of consumer credit transactions secured by real property 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. Further, for reasons described above in the section-by-section analysis of § 1026.38(l)(5), the Bureau believes that the modification made to the statutory requirement to disclose how a consumer's partial payments will be applied to the consumer's account, and whether any penalties will apply, will improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures. The modifications will also be in the interest of consumers and in the public interest.

Appendix D—Multiple Advance Construction Loans

Currently, appendix D to Regulation Z provides guidance concerning the disclosure of multiple-advance construction loans, including such loans that may be permanently financed by the same creditor. Dodd-Frank Act section 1032(f) requires that the Bureau propose rules and forms that combine the disclosures required under TILA and RESPA sections 4 and 5 into a single, integrated disclosure for mortgage loan transactions covered under TILA and RESPA. Proposed revisions to part II of appendix D would have excluded loans that are subject to § 1026.19(e) and (f) from the guidance provided under paragraph A.1 of part II, but would have included those loans in the guidance provided under paragraph A.2 of part II. Proposed revised comment app. D-6 would have clarified that some home construction loans that are secured by a dwelling are subject to § 1026.18(s) and not § 1026.18(g), with a reference to proposed comment app. D-7. One illustration of the application of appendix D to transactions subject to § 1026.18(s) also would have clarified that, where interest is payable on the amount actually advanced for the time the amount is outstanding, the construction phase must be disclosed pursuant to appendix D, part II.C.1, and the interest rate and payment summary table disclosed under § 1026.18(s) in such cases must reflect only the permanent phase of the transaction.

Proposed comment app. D-7 would have clarified that some home construction loans that are secured by real property are subject to §§ 1026.37(c) and 1026.38(c) and not § 1026.18(g). Under § 1026.17(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction. Two illustrations would have further clarified the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c).

The first illustration would have clarified that, if a creditor elects pursuant to § 1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in proposed §§ 1026.37(c) and 1026.38(c). Under proposed §§ 1026.37(c) and 1026.38(c), the creditor would have been required to disclose the periodic payments during the construction phase in the projected payments table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under § 1026.18(g)" would not have applied because the transaction would have been governed by §§ 1026.37(c) and 1026.38(c) rather than § 1026.18(g). The creditor would have determined the amount of the interest only payment to be made during the construction phase using the assumption in appendix D, part I.A.1. Also, because the construction phase would be disclosed as a separate transaction and its terms would not repay all principal, the creditor would have been required to disclose the construction phase transaction as a balloon product, pursuant to proposed §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), in addition to reflecting the balloon payment in the projected payments table.

The second illustration would have clarified that, if the creditor elects to disclose the construction and permanent phases as a single transaction, the repayment schedule must be disclosed pursuant to appendix D, part II.C.2. Under proposed appendix D, part II.C.2, the projected payments table would have been required to reflect the interest only payments during the construction phase in a first column, followed by the appropriate column(s) reflecting the amortizing payments for the permanent phase. The creditor would have determined the amount of the interest only payments to be made during the construction phase using the assumption in appendix D, part II.A.1.

Several national trade association commenters representing the financial services industry stated that requiring that the integrated disclosures be used to disclose the terms of construction loans to consumers could affect the availability of construction loans. The integrated disclosure requirements of this final rule apply to construction loans. The scope of the integrated disclosure requirements is discussed above in the section-by-section analysis of § 1026.19.

Several industry commenters also stated that additional examples would be helpful for implementation. The extent to which the Bureau believes samples of construction loans are necessary is discussed below under the section-by-section analysis of appendix H to Regulation Z. The Bureau received no other comments on the proposed amendments to appendix D. Accordingly, the Bureau is adopting the revisions to part II of appendix D and comments app. D-6 and D-7 as proposed with minor modifications to provide clarity.

The Bureau is exercising its authority under TILA section 105(a) and Dodd-Frank Act section 1405(b) to amend appendix D to Regulation Z by revising the guidance provided in appendix D and the commentary to the appendix to assist in the integration of these disclosures. In addition to effectuating the mandate in Dodd-Frank Act sections 1032(f), 1098, and 1100A to integrate the mortgage loan disclosure requirements under TILA and RESPA, the Bureau believes that these revisions are necessary and proper to effectuate the purposes of TILA by promoting the informed use of credit because the proposed revisions assist consumers' understanding of their legal obligations to the creditor. In addition, consistent with section 1405(b) of the Dodd-Frank Act, these revisions will improve consumer awareness and understanding of transactions involving residential mortgage loans and are, therefore, in the interest of consumers and the public.

Appendix H—Closed-End Forms and Clauses

The Bureau proposed to add forms H-24, H-25, H-26, and H-27 to appendix H to Regulation Z. Forms H-24 and H-25 would have provided blank forms for the Loan Estimate and Closing Disclosure illustrating the inclusion or exclusion of information as required, prohibited, or applicable under §§ 1026.37 and 1026.38. In addition, form H-24 would have provided examples of completed Loan Estimates in whole or in relevant part for a fixed rate transaction, an interest only adjustable rate transaction, a refinance with a prepayment penalty, a loan with a balloon payment, and a loan with negative amortization. Form H-25 would have provided examples of completed Closing Disclosures in whole or in relevant part for a fixed rate transaction, a purchase transaction with funds from a second loan, a transaction in which a second loan is satisfied outside of closing, samples of a refinance transaction, and examples of the modifications to the Closing Disclosure permitted pursuant to proposed § 1026.38(t)(5)(v) through (viii).

The Bureau proposed forms H-24 and H-25 pursuant to the authority and for the reasons described above in the section-by-section analysis of §§ 1026.37(o) and 1026.38(t). Specifically, the Bureau proposed forms H-24 and H-25 as standard forms that would have been required for transactions that were subject to proposed § 1026.19(e) and (f) and were federally related mortgage loans, as defined in Regulation X. For transactions that were subject to proposed § 1026.19(e) and (f) but were not federally related mortgage loans, the forms in H-24 and H-25 would have been models for compliance with the applicable requirements of §§ 1026.19, 1026.37, and 1026.38. For these transactions, the Bureau also proposed these forms pursuant to its authority to publish model forms under TILA section 105(b) and (c).

Transactions subject to proposed § 1026.19(e) would have been subject to additional disclosure requirements under proposed § 1026.19(e)(1)(vi), (2)(ii), and (3)(ii)(C). Proposed form H-26 would have provided a model form for compliance with the statement required by proposed § 1026.19(e)(2)(ii) when a creditor provides a written estimate of terms or costs specific to a consumer before the consumer receives the disclosures required under § 1026.19(e)(1)(i) and indicates intent to proceed with the transaction. Consistent with proposed

§ 1026.19(e)(2)(ii), this statement would have been required to be placed at the top of the front of the first page of the estimate in a font size that is no smaller than 12-point font.

Proposed form H-27(A) would have provided a model form for the written list of settlement service providers required by proposed § 1026.19(e)(1)(vi) and the statement required by § 1026.19(e)(3)(ii)(C) that the consumer may select a settlement service provider that is not on the list. Proposed forms H-27(B) and (C) would have been samples for this form. The Bureau proposed forms H-26 and H-27 pursuant to its authority to publish model forms under TILA section 105(b) and (c). The Bureau also proposed to make conforming amendments to samples H-13 and H-15 and their associated comments pursuant to its authority to publish model forms under TILA section 105(b) and (c).

The Bureau noted in the proposal that, during the Small Business Review Panel, several small business representatives requested that the Bureau provide detailed guidance on how to complete the integrated forms, including, as appropriate, samples of completed forms for a variety of loan transactions. *See* Small Business Review Panel Report at 28. Similar feedback was also submitted by several industry trade associations in response to the Small Business Review Panel Outline. Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau proposed the examples described above, which, of course, added significant length to the proposed rule. The Bureau sought comment on whether the number and types of examples are beneficial to industry or whether certain examples should be added to or deleted from the rule, including sample forms in other languages, such as Spanish.

The Bureau also received feedback from industry stakeholders during its outreach prior to issuing the proposal that samples of a construction-only transaction and a transaction with both a construction and permanent financing phase would be beneficial to industry. The Bureau proposed amendments to appendix D to Regulation Z and its commentary, as described above, that related to such construction financing and would have provided guidance regarding its disclosure on the proposed integrated disclosures. The Bureau did not propose samples for construction financing because it believed that proposed forms H-24(C) and (E) would have provided the necessary illustration for such financing, because these samples would have contained the interest only period and final balloon payment, respectively, which, as described above, are product features that would be disclosed in connection with such construction financing. The Bureau noted in the proposal that one difference for the disclosure of such financing would have been that the purpose of the transaction disclosed under proposed §§ 1026.37(a)(9) and 1026.38(a)(5)(ii) would have been “Construction.” The Bureau sought comment on whether, in light of the proposed amendments to appendix D and its commentary, additional samples for a construction-only or construction with permanent financing would be beneficial to industry.

Comments

The Bureau received comments addressing the samples in the proposal from industry trade associations, consumer advocacy groups, settlement agents, escrow agents, document service providers, and other industry participants. Commenters generally requested more samples and guidance in appendix H, rather than less. Several commenters requested that additional samples be added to appendix H, such as samples of construction financing. Several industry trade associations representing creditors requested clarification regarding how the variations provided by proposed blank forms H-24(A) and H-25(A) relate to the proposed rule. The industry trade associations requested that the Bureau explain how the amounts and formats were the appropriate ones under the specific sections and commentary provision of the proposed rule, including a comprehensive outline of the facts underlying each example.

Industry trade associations also requested clarification regarding whether proposed form H-25(J) would be permitted under the proposed rule to be used in all transactions that do not involve a seller. The trade associations also commented that such transactions may involve charges that would fall under “Adjustments and Other Credits” that are required to be disclosed under proposed § 1026.38(e), but proposed form H-25(J) does not illustrate how to factor such charges into the Cash to Close figure. One community bank commenter expressed concern that neither the model nor the sample Closing Disclosure forms provided an example where an escrow account had not been established in connection with the transaction. It asserted that creditors would need such an example to comply with proposed § 1026.38(l)(7).

A State industry trade association representing banks commented regarding proposed form H-26(B) that its member banks would prefer to use their own version of a consumer-specific worksheet, rather than one with a similar format as the proposed Loan Estimate. The trade association requested clarification regarding whether the use of their own consumer-specific worksheets would be permitted under the proposed rule. Consumer advocacy groups expressed concern that permitting the use of a worksheet using the proposed Loan Estimate disclosure form before the loan application is made would cause consumers to confuse the worksheet with the Loan Estimate, even with the required disclaimer under proposed § 1026.19(e)(2)(ii).

A trade association representing escrow agents expressed support for proposed form H-25(I) that would have illustrated the modifications permitted by proposed § 1026.38(t)(5)(vii) for a Closing Disclosure provided to a seller. A trade association representing banks and a document software company requested a clarification regarding the dates disclosed under the

Adjustable Payment and Adjustable Interest Rate tables in proposed form H-24(C) under proposed § 1026.37(i) and (j). A document software company requested a sample illustrating the proper treatment of an introductory interest rate and a preferred interest rate. The document software company also requested that the administrative information appearing at the bottom of proposed forms H-24 and H-25 be removed, and that administrative information be expressly permitted by the regulation to appear at the bottom of the form.

An industry trade association representing creditors suggested a revision to proposed form H-24 with respect to the expiration of cost estimates on the disclosures. A State trade association representing banks stated that the proposed illustration of the written list provided in proposed form H-27(B) made it unclear whether creditors are required to list the estimated cost for a service provider because the sample lists the survey fee for only one of the providers listed. An individual settlement agent noted inconsistencies in the samples regarding the alphabetizing of charges on the Loan Estimate. An individual escrow agent commented that the proposed samples of form H-25 illustrate both consumer and seller information on the same disclosure and expressed confidentiality and privacy concerns. Several commenters, including industry trade associations and consumer advocacy groups commented that the final rule should provide sample Spanish or other non-English language forms, and that the Bureau should use consumer testing to enhance the effectiveness of such sample forms.

Discussion

The Bureau has considered the comments regarding the proposed forms and samples of appendix H to Regulation Z. The comments requesting changes to the information required to be disclosed or clarification regarding the disclosure requirements under §§ 1026.37 and 1026.38 are discussed within their respective section-by-section analyses.

Additional samples. Regarding the comments that the Bureau add additional samples of the Loan Estimate and Closing Disclosure to appendix H, the Bureau notes that it proposed sample disclosures illustrating a large number of disclosure requirements and variations permitted or required by §§ 1026.37 and 1026.38. For example, the Bureau proposed samples that include a fixed rate, adjustable rate, interest only, refinance, balloon payment, negative amortization, a refinance transaction, a violation of the limitations on increases under § 1026.19(e)(3), as well as several modifications permitted under proposed § 1026.38(t)(5). In response to this comment, however, the Bureau has determined to modify several of the proposed samples to illustrate additional variations in the information required or permitted to be disclosed. For example, the Bureau has revised proposed form H-24(B) to illustrate the disclosure of the existence of a prepayment penalty in a transaction under § 1026.37(b)(4). In addition, the Bureau has modified proposed forms H-25(E), (F), and (G) to illustrate the alternative tables permitted under final §§ 1026.37(d)(2) and (h)(2) and 1026.38(d)(2) and (e) for transactions without sellers.

Specifically with respect to the comments requesting that samples of construction financing be added to appendix H, the Bureau has determined not to add such samples to appendix H. While the commenters noted areas in which clarification in the proposed disclosure requirements would facilitate compliance, the comments did not provide any information regarding aspects of construction financing that would require different disclosures than are illustrated by forms H-24(C) and (E). The Bureau continues to believe that forms H-24(C) and (E) provide sufficient illustration of disclosures for such financing, because these samples contain the interest only period and final balloon payment that would be disclosed in connection with such construction financing.

The Bureau also does not believe additional samples are necessary to illustrate the treatment of an introductory interest rate and a preferred interest rate. As noted above in the section-by-section analysis of § 1026.37(b)(2), the Bureau intended the proposed provision to require disclosure of an introductory interest rate. Accordingly, the sample forms for adjustable rate loans in the proposal illustrated the disclosure of an introductory interest rate, as applicable. In addition, clarification of the disclosure of preferred interest rates in the integrated disclosures is described in the section-by-section analyses of § 1026.37(a)(10)(i)(B) and (b)(6), and other applicable sections for which such clarification was sought, and considering the clarification provided, the Bureau believes additional samples are unnecessary.

Additional facts and explanations for the samples. Regarding the comments seeking clarification regarding how the variations provided by proposed blank forms H-24(A) and H-25(A) relate to the proposed rule, and requesting detailed explanations and facts regarding the samples, the Bureau believes that such explanations are unnecessary. The descriptions provided before each form illustrate the basic facts regarding the transaction and/or note the disclosure requirements being illustrated. The forms that provide samples of disclosures for particular transactions, which illustrate particular disclosures required by §§ 1026.37 and 1026.38 (*i.e.*, the non-blank forms), are intended to do only that, and not to demonstrate how to comply with §§ 1026.37 and 1026.38 in particular factual scenarios. The Bureau notes that such guidance is provided in the official commentary to Regulation Z. However, the Bureau understands that some additional details in descriptions may facilitate compliance, and thus, the Bureau has modified certain of the descriptions of the forms, as described below. The Bureau also notes that the blank model forms H-24(A), H-24(G), H-25(A), and H-25(J) provide additional pages for the variable disclosure requirements under §§ 1026.37 and 1026.38, which is stated in the descriptions of such forms. For example, form H-24(A) contains two versions of page one to reflect the two possible disclosures under § 1026.37(a)(7)(i) and (ii); four versions of page two to reflect the possible permutations of the disclosures under § 1026.37(i) and (j); and four versions of page three to include two pages with the variable disclosure requirements under § 1026.37(n)(1) and (2) for transactions subject to 15 U.S.C. 1639h or 1691(e) for which the disclosure under § 1026.37(m)(1) is required, and two such pages for which the disclosure under § 1026.37(m)(1) is not required.

Modifications to the Closing Disclosure. The Bureau also believes that clarifications regarding the proper use of proposed form H-25(J), which would have illustrated the modifications permitted for a transaction without a seller under proposed § 1026.38(t)(5)(viii), are unnecessary within appendix H. The Bureau notes that under proposed § 1026.38(t)(5)(viii), the modification would have been permitted to be used in all transactions that do not involve a seller, not only refinance transactions. Regarding the comment that transactions without sellers may involve charges that would fall under "Adjustments and Other Credits" that are required to be disclosed under proposed § 1026.38(i), the Bureau observes that such charges would have been disclosed under the table permitted by proposed § 1026.38(t)(5)(viii)(B). As described in the section-by-section analysis of § 1026.38(t)(5)(vi) above, the Bureau is modifying the provision permitting this table in transactions without sellers to renumber the provision, as described above, and to revise the heading and the label of the total amount in the table. In addition, the Bureau is revising § 1026.38(d) and (e) to provide for alternative Costs at Closing and Calculating Cash to Close tables for transactions without sellers, as described in their respective section-by-section analyses. The Bureau is making these modifications in response to comments and based on the Bureau's post-proposal consumer testing. For the aforementioned reasons, the Bureau is finalizing form H-25(J) with modifications to the description to reflect the renumbering of the paragraph permitting this modification for transactions without a seller under § 1026.38(t)(5)(vii) of this final rule, to reflect the alternative tables described above, and with the modifications to the format described above.

Regarding the concern that form H-25 illustrates both consumer and seller information on the same disclosure, causing confidentiality and privacy concerns, the Bureau observes that proposed § 1026.38(t)(5)(vi) and (vii) permitted creditors to disclose consumer and seller information on separate disclosures, and permitted a version of the Closing Disclosure that contained only information that pertained to the seller. These provisions are adopted as proposed, renumbered as § 1026.38(t)(5)(v) and (vi).

Consumer-specific worksheets. The Bureau understands commenters' concerns regarding the consumer-specific worksheet illustrated in proposed form H-26(B). The Bureau notes that the proposal would not have required the use of the worksheet illustrated in form H-26(B), or any other particular format of consumer-specific estimate. The proposal only intended the sample to be an example of a consumer-specific estimate that had a similar format as the proposed Loan Estimate. However, the Bureau understands that this sample caused confusion. The Bureau also understands commenters' concerns that the sample, because of its similarity to the Loan Estimate form, would cause consumer confusion, even with the disclaimer required under § 1026.37(e)(2)(ii). The Bureau recognizes that receipt of a consumer-specific estimate in format similar to form H-24, before the consumer receives the disclosures required under § 1026.19(e)(1)(i), could be confusing or misleading to consumers in some circumstances. In addition, as discussed in the section-by-section analysis of § 1026.19(e)(2)(ii), there was some confusion from industry commenters regarding whether the format of the worksheet illustrated by H-26(B) was required. Accordingly, the Bureau is not adopting form H-26(B). The Bureau believes that § 1026.19(e)(2)(ii) and model form H-26 in the final rule provide sufficient clarity regarding the requirement to include the specified statement on a consumer-specific estimate. In addition, as described in the section-by-section analysis of § 1026.19(e)(2)(ii), the Bureau is adopting in § 1026.19(e)(2)(ii) a provision prohibiting creditors from providing a written estimate of terms or costs with headings, content, and format substantially similar to form H-24 or H-25.

Administrative information. Regarding commenters' requests that administrative information be expressly permitted by the regulation to appear at the bottom of the form, as appeared to be illustrated by proposed forms H-24 and H-25, the Bureau, as described in the respective section-by-section analyses of §§ 1026.37(o)(5)(v) and 1026.38(t)(5)(iii), is modifying the proposed provisions to permit the addition of administrative information at the bottom of each page. Accordingly, forms H-24 and H-25 will include a particular form of administrative information, but which is not intended to be a requirement that administrative information must appear as it is illustrated in these samples. The Bureau understands the document software companies and others in the industry have different forms of administrative information, such as footers to identify forms as particular versions, which may include their company name with such identifying information.

Spanish language forms. As discussed in the section-by-section analyses of §§ 1026.37(o)(5) and 1026.38(t)(5), and in part III above, in response to feedback and public comments requesting the Bureau include and test with consumers Spanish language versions of the integrated disclosures in the final rule, the Bureau is finalizing versions of the Loan Estimate and the Closing Disclosure translated into Spanish, as permitted under §§ 1026.37(o)(5)(ii) and

1026.38(t)(5)(viii). The Bureau conducted four rounds of qualitative consumer testing to ensure the effectiveness of the translations. The Bureau is finalizing these versions as model and sample forms H-28(A) through (H) of appendix H to Regulation Z. Each of these forms is a translated version of a specific form under forms H-24 and H-25, which is noted in the description of each form. Specifically, the Spanish language forms include: a blank model Loan Estimate and a blank model Closing Disclosure, which are translated versions of forms H-24(A) and H-25(A); a blank model Loan Estimate and a blank model Closing Disclosure with modifications for transactions without a seller, which are translated versions of forms H-24(G) and H-25(J); and translations of sample forms H-24(C), H-24(D), H-24(E), H-24(F), H-25(B), and H-25(E). While these model forms are translations of forms H-24 and H-25 made pursuant to §§ 1026.37(o)(5)(ii) and 1026.38(t)(5)(viii), they are not standard forms that are required to be used for federally related mortgage loans pursuant to §§ 1026.37(o)(3) and 1026.38(t)(3) when the disclosure is translated into Spanish under §§ 1026.37(o)(5)(ii) and 1026.38(t)(5)(viii). Sections 1026.37(o)(5)(ii) and 1026.38(t)(5)(viii) permit the translation of the disclosures required under §§ 1026.37 and 1026.38, but do not require a particular translation. Accordingly, under §§ 1026.37(o)(3) and 1026.38(t)(3), form H-28 is not a standard form that is required for Spanish language translations.

In the proposal, the Bureau referred generally to the Loan Estimate and Closing Disclosure as form H-24 and form H-25, respectively, and the pre-disclosure disclaimer and written list of service providers as form H-26 and form H-27, respectively. The Bureau intended these references to be inclusive of all forms under these forms, including both the blank or sample forms. The Bureau did not receive any comments regarding this usage of the form numbers and thus, believes it provided sufficient clarity regarding the Bureau’s references to the forms collectively. Accordingly, in this final rule, the Bureau likewise refers to the forms, including form H-28, collectively in this manner where appropriate.

Final Rule

For the reasons discussed above, the Bureau is adopting forms H-26(A), H-27(A), H-27(B), and H-27(C) as proposed, with minor modifications to the titles of the forms to clarify their status as model or sample forms, a minor modification for clarity to the directional language in the header of form H-27 to refer expressly to the Loan Estimate, and renumbering form H-26(A) as H-26. The Bureau is not adopting form H-26(B), based on comments raising concerns about the similarity of the format of the worksheet sample to the format of form H-24, and thus, form H-26 does not require a letter subdesignation. The Bureau is also adopting the conforming amendments to samples H-13 and H-15 and their associated comments as proposed.

With respect to the Loan Estimate and Closing Disclosure, and the proposed samples of such disclosures for particular transactions in appendix H, as noted above, the Bureau is modifying the titles and descriptions of such forms to provide greater clarity that such forms are model forms under Regulation Z. Although forms H-24 and H-25 are model forms under Regulation Z, the Bureau notes that such forms are standard forms pursuant to RESPA section 19(a) authority that are required to be used for federally related mortgage loans pursuant to §§ 1026.37(o)(3) and 1026.38(t)(3). Forms H-24(A) and (G), and forms H-25(A), and (H) through (J) are blank forms, and illustrate the required master headings, headings, subheadings, etc., that are required by §§ 1026.37 and 1026.38. The other forms under H-24 and H-25 illustrate the disclosures required under §§ 1026.37 and 1026.38, for particular types of transactions. For federally related mortgage loans, the disclosures under §§ 1026.37 and 1026.38 are required to be made as illustrated by such forms, including their formatting (*e.g.*, using bold font where illustrated). The Bureau has added comment app. H-30 to add clarity regarding this issue.

In addition, the Bureau notes, as described above, that it has revised the design of the disclosures based on public comment and its post-proposal qualitative and quantitative testing. For example, commenters stated that the underscoring in forms H-25 for the disclosures in the Security Interest and Partial Payments disclosures under § 1026.38(l)(5) and (l)(6) would be difficult to comply with and decrease readability for consumers. Based on this comment, the Bureau has removed the underscoring in the disclosure required by § 1026.38(l)(6) from samples H-25(B), (E), (F), and (G) and instead used italicized font to emphasize that this text was inputted by the creditor. The underscoring no longer appears in the disclosure required by § 1026.38(l)(5), because of modifications to the required disclosure (see the section-by-section analysis of § 1026.38(l)(5)). However, the Bureau has retained the underscoring in the blank model forms for the disclosure under § 1026.38(l)(5) as well as added it for the Late Payment disclosures under §§ 1026.37(m)(4) and 1026.38(l)(3), to clarify that the information in the underscore is to be completed by the creditor. The modifications to the design of the Loan Estimate and Closing Disclosure for particular disclosures under §§ 1026.37 and 1026.38 are discussed in more detail their respective section-by-section analyses. The Bureau has incorporated these changes into the forms included in appendix H, to reflect these changes in the design of the integrated disclosure. Other than incorporating these design changes, the Bureau is adopting forms H-24(A), H-24(E), H-24(F), H-25(A), H-25(B), H-25(C), H-25(D), H-25(H), and H-25(I) as proposed. The Bureau is making a minor modification to the description of H-25(B) to note that the product of the transaction illustrated is unchanged from the transaction illustrated by form H-24(B), and minor modifications to the descriptions of forms H-25(H) and H-25(I) to reflect the renumbering of the modifications permitted by § 1026.38(t)(5).

The Bureau is modifying form H-24(B) to also illustrate a prepayment penalty, and is modifying the description to reflect that fact. The Bureau is also modifying the description of form H-24(C) to clarify that the sample illustrates an introductory interest rate, and to reflect certain minor modifications to the transaction illustrated. The Bureau is modifying form H-24(D) to provide an illustration of a different refinance transaction and to provide additional facts in the description. In addition, as described in the section-by-section analyses of § 1026.37(d) and (h), the final rule provides for optional alternative Costs at Closing and Calculating Cash to Close tables for transactions without a seller. Accordingly, in addition to the blank Loan Estimate form H-24(A), the Bureau is adding a blank Loan Estimate form H-24(G) in appendix H, which includes the optional alternative tables permitted by § 1026.37(d)(2) and (h)(2).

The Bureau is modifying form H-25(E) to be related to the transaction illustrated by form H-24(D), as modified, and to provide additional detail in the description. The Bureau is also modifying form H-25(F) to reflect a transaction with a violation of the good faith estimate requirements of § 1026.19(e)(3), and a refund related to such violation under § 1026.19(f)(2)(v), and has revised the description accordingly. The Bureau is also modifying form H-25(G) to provide an illustration of a refinance transaction in which the consumer must pay funds at consummation, and has revised the description accordingly. The Bureau is modifying form H-25(J) to a provide a blank model form that includes the alternative Costs at Closing and Calculating Cash to Close tables provided under § 1026.38(d)(2) and (e), as well as the modifications under § 1026.38(t)(5)(vii).

In addition, as noted in the section-by-section analysis of § 1026.20(e), the Bureau is adopting in this final rule provisions requiring the Post-Consummation Escrow Cancellation

Disclosure required under TILA section 129D(j)(1)(B). Accordingly, the Bureau is adopting model form H-29, which can be used by creditors or servicers to comply with the disclosure requirements regarding the cancellation of an escrow account established in connection with a closed-end transaction secured by a first lien on real property or a dwelling, which are adopted in § 1026.20(e). The Bureau is also adopting comment app. H–29, as proposed by the Board in the Board's 2011 Escrows Proposal, with modifications to apply the comment specifically to model form H-29. The Board received comments regarding the content and format of the Board's proposed form for the Post-Consummation Escrow Cancellation Disclosure. As discussed in the section-by-section analysis of § 1026.20(e), the Bureau has reviewed those comments and incorporated them into its design of model form H-29, which is also based on the content and format of the Pre-Consummation Escrow Establishment Disclosure and the Pre-Consummation Escrow Waiver Disclosure that the Bureau is implementing in this final rule under § 1026.38(l)(7), which was developed using extensive consumer testing, to ensure the two disclosures present information in a similar manner for consumers. At the Bureau's consumer testing, consumer participants were able to understand the escrow accounts that would be established in connection with the transaction, and the consequences of waiving such an escrow account. *See* Kleimann Testing Report at 223. Accordingly, the Bureau believes the language and format of model form H-29 will be effective in aiding consumer understanding of the consequences of the cancellation of their escrow accounts. Accordingly, the Bureau is adopting model form H-29 and the Board's proposed comment app. H-29, with modifications to apply the comment specifically to model form H-29. Comment app. H–29.i states that the model form illustrates, in the tabular format, the disclosures required by § 1026.20(e). Comment app. H–29.ii specifies that a creditor satisfies § 1026.20(e) if it provides model form H–29, or a substantially similar notice, which is properly completed with the disclosures required by § 1026.20(e). Comment app. H–29.iii and app. H–29.iv provide guidance regarding the formatting requirements. Comment app. H–29.v clarifies that creditors and servicers may use color, shading and similar graphic techniques with respect to the notice, so long as the notice remains substantially similar to model form H-29.

As noted above, the Bureau is also adopting several Loan Estimates and Closing Disclosures translated into the Spanish language. The Bureau is adopting model forms H-28(A), H-28(F), H-28(I), and H-28(J), which are Spanish translations of the blank Loan Estimate and Closing Disclosure model forms H-24(A), H-25(A), H-24(G), and H-25(J), as is permitted under §§ 1026.37(o)(5)(ii) and 1026.38(t)(5)(viii), respectively. The Bureau is also adopting sample forms H-28(B), H-28(C), H-28(D), and H-28(E), which are Spanish language translations of the Loan Estimate sample forms H-24(C), H-24(D), H-24(E), and H-24(F), respectively, as is permitted under § 1026.37(o)(5)(ii). In addition, the Bureau is also adopting sample forms H-28(G) and H-28(H), which are Spanish language translations of the Closing Disclosure sample forms H-25(B) and H-25(E), respectively, as is permitted under § 1026.38(t)(5)(viii). Forms H-28(A) through H-28(J) are model forms under Regulation Z. However, unlike forms H-24(A), H-24(C), H-24(D), H-24(E), H-24(F), H-24(G), H-25(A), H-25(B), H-25(E), and H-25(J), they are not required standard forms for federally related mortgage loans under §§ 1026.37(o)(3) and 1026.38(t)(3). Accordingly, for federally related mortgage loans, they are not required to be used.

As noted above, the Bureau is adopting forms H-24, H-25, H-26, H-27(A),and H-28 including the forms H-24(B) through (F), H-25(B) through (G), and H-28(B) through (H) (which are sample forms illustrating the disclosures required by §§ 1026.37 and 1026.38 for particular transactions), as model forms. To provide greater clarity regarding the model form status of forms H-24, H-25, H-26, H-27, and H-28, the Bureau is amending comment app. G and H-1 to list forms H-24, H-25, H-26, H-27, and H-28 as model forms for which the formatting changes listed in the comment are not permitted. The Bureau believes this revision to comment app. G and H-1 will facilitate compliance with the disclosure requirements of this final rule, which is one of the purposes of the integrated disclosure requirements set forth by the Dodd-Frank Act. The Bureau is adopting these forms pursuant to its authority to publish model forms under TILA section 105(b) and (c). In addition, the Bureau adopts the aforementioned forms, samples, and descriptions in appendix H to Regulation Z pursuant to its mandate to publish integrated disclosures under Dodd-Frank Act sections 1098 and 1100A, implementation authority of TILA section 105(a), and RESPA section 19(a). The Bureau believes the extensive forms (many of which illustrate particular disclosures required under §§ 1026.37 and 1026.38 for particular product types), and descriptions adopted in appendix H for the integrated disclosures will further the purposes of the integrated disclosures, as stated by Dodd-Frank Act sections 1098 and 1100A, to aid consumer understanding and facilitate compliance with the disclosure requirements. The Bureau believes that the extensive forms and descriptions the Bureau is adopting for the integrated disclosures will assist industry in complying with the disclosure requirements of §§ 1026.37 and 1026.38, which in turn, will assist consumers in understanding their transactions, because they will help ensure their disclosures are completed in compliance with the regulations. The Bureau believes the adopted forms and descriptions effectuate the purposes of TILA and RESPA, as they will ensure a meaningful disclosure of credit terms to consumers and promote the informed use of credit and more effective advance disclosure to home buyers and sellers of settlement costs. In addition, consistent with section 1032(a) of the

Dodd-Frank Act, the Bureau believes they will ensure that the features of consumer credit transactions secured by real property 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.

VI. Effective Date

A. The Bureau's Proposal

As discussed in part I above, the Bureau is adopting rules and disclosures that combine the pre-consummation disclosure requirements of TILA and sections 4 and 5 of RESPA. The Dodd-Frank Act does not impose a deadline for issuing final rules and disclosures in connection with its mandate to integrate disclosure requirements or provide a specific amount of time for entities subject to those rules to come into compliance. As also discussed in part II.E, above, the Dodd-Frank Act establishes two goals for the TILA-RESPA mortgage disclosure integration: to improve consumer understanding of mortgage loan transactions; and to facilitate industry compliance with TILA and RESPA. Dodd-Frank Act sections 1098 and 1100A. In addition, TILA section 105(d) generally provides that a regulation requiring any disclosure that differs from the disclosures previously required shall have an effective date no earlier than "that October 1 which follows by at least six months the date of promulgation," except that the Bureau may at its discretion lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements. 15 U.S.C. 1604(d). The Bureau must balance these statutory objectives and requirements in considering the length of the implementation period.

Because the final rule will provide important benefits to consumers, the Bureau seeks to make it effective as soon as realistically possible. However, the Bureau understands that the final rule will require creditors, mortgage brokers, and settlement agents to make extensive revisions to their software, to change their dealings and information sharing practices with each other and other settlement service providers, and to retrain their staffs. In addition, some entities will be required to implement other Dodd-Frank Act provisions, which are subject to separate rulemaking deadlines under the statute and have separate effective dates. Therefore, the Bureau solicited comment on when the final rule should be effective. In particular, the Bureau sought comment on how much time industry needs to make these changes, and specifically requested details on the required updates and changes to systems and other measures that would be required to implement the rule and the amount of time needed to make those changes.

Furthermore, in light of the feedback provided by small entity representatives during the SBREFA process, as reflected in the Small Business Review Panel Report, the Bureau solicited comment on whether small entities affected by the rule should have more time to comply with the final rule than larger entities. In soliciting comment on this issue, however, the Bureau noted its concern that a bifurcated implementation period could be detrimental to consumers. During any period where only larger entities must comply with the final rule, consumers potentially would receive different disclosures and be subject to different sets of consumer protections depending on their choice of creditor, mortgage broker, or settlement agent. In addition, larger entities that are subject to the final rule and that purchase loans from small entities may nevertheless insist that small entities comply with the final rules. Accordingly, the Bureau solicited comment on whether any separate compliance period for larger entities should take into account the relationship between larger and smaller entities.

B. Comments

In response to the proposed rule, the Bureau received many comments concerning the effective date and implementation period. While consumer advocacy groups did not submit comments on the topic, a large number of industry commenters addressed the issue in detail. The spectrum of timing suggestions for the implementation period ranged from one industry commenter that suggested 12 months, many commenters that advocated for 18 to 24 months, and one industry commenter that suggested 36 months. No commenters provided statistical data to support their arguments, though a number of commenters described their experiences in implementing other recent mortgage initiatives such as HUD's earlier changes to the disclosure forms under RESPA. Industry commenters also commented on other aspects of the implementation period and the effective date, including providing suggestions for Bureau assistance during the implementation period and the applicability of the effective date to entities of different sizes.

Implementation Period

The lone industry commenter to argue that industry could successfully implement the final rule within 12 months asserted that such a period should be more than sufficient for industry to implement the new disclosures and update technology and software programs, as the current disclosure forms are already implemented in all loan origination software and could be updated quickly. The vast majority of commenters however, urged an implementation period of at least 18 to 24 months to implement the many changes in the final rule.

Commenters argued that there are many major rulemakings that will affect disclosures, including the Title XIV Rulemakings that were issued by the Bureau in January 2013, and that as a result, the mortgage industry is facing major regulatory amendments in almost every area. According to these commenters, while it is difficult to predict all of the compliance challenges posed by the intertwined mortgage reforms, the unprecedented scope and broad impact of these new requirements will force creditors and servicers to define and implement new business models that are sustainable in this changed regulatory environment. These commenters argued that creditors could seek to eliminate operational risk through scaling back or discontinuing their lending activities if the duration of the implementation period is insufficient, which would be harmful to both consumers and the industry.

Various commenters also noted that, unlike the Title XIV Rulemakings, Congress did not provide an issuance date or implementation date for the integrated disclosures final rule, so they argued that this weighs in favor of providing sufficient time to ensure successful implementation. These commenters contended that given the enormity of the operational changes that will accompany the integration of these forms, an implementation period of at least 18 to 24 months is required to allow creditors and the title and settlement industries sufficient time to implement final changes through necessary staff training on the new requirements, revisions to policies, procedures, and other materials, software/data/technology processing changes, education of related industry professionals (*e.g.*, settlement agents), and coordination with other regulatory changes required under the Dodd-Frank Act. One industry commenter noted that its vendors have estimated that developing the forms will take 18 to 24 months, and also estimated that an additional six to 12 months will be necessary to implement them. Another industry commenter argued that the Bureau should coordinate the implementation dates of all mortgage-related rules and allow a 24-month implementation period for use of the new disclosure forms. One trade association commenter urged the Bureau to allow for a minimum of 18 months from the date of any final rule issuance to ensure that banks of all sizes are able to properly incorporate and implement these rules in an orderly and efficient manner.

One trade association commenter argued that the proposed changes to the disclosure forms and the underlying rules will be pervasive and will necessitate changes to all of the systems that support the lending process. According to this commenter, changes will be required to user interfaces used by creditors to review and complete the forms, underlying programming logic and/or rules engines, supporting databases, the user interface where consumers review and sign documents, data input exchanges, data output exchanges, document/data retention systems, and compliance tracking systems. According to this commenter, not only will software systems need to be updated, but systems for the various loan types offered by creditors will need to be tested, adjusted, and retested. This commenter stated that this is a process that can take months and often involves not only compliance personnel, but also impacts operating systems and processes and can require guidance from legal and regulatory advisors. This commenter argued that it is only after this lengthy process is complete that staff training can begin, and that training will need to be broad-based and include mortgage loan originators, personal bankers doing home equity loans, processors, closers, third-party closing agents, customer service representatives, and operations personnel who input loan data into the creditor's data processing systems, etc. Given these considerations, this commenter argued that it is highly unlikely that this can be accomplished and completed in a period less than 12 months and, therefore, that a reasonable implementation period would be 18 months, at a minimum.

In addition, commenters argued that creditors will have to reconsider and likely renegotiate their arrangements with third-party service providers, in light of reduced tolerances and increased responsibilities for creditors. Some commenters contended that creditors will need to coordinate with affiliated and third-party settlement providers to ensure that consumers are receiving disclosures consistent with the new requirements. According to these commenters, since many creditors will need to rely on third parties to fulfill a significant portion of their responsibilities under the rule, it is critical that creditors have the time to work with service providers to ensure compliance and mitigate operational risk. One trade association commenter argued that whenever existing forms are modified or combined, the implementation of the revised forms inevitably takes longer than expected, in part due to the number of systems that have to be updated. According to some commenters, all of the above issues will be even more severe for smaller creditors.

Some commenters argued that all loan products, sales and marketing arrangements, compensation schemes, business relationships, and transaction timing requirements are built on the basis, or in consideration of, the RESPA and TILA statutes. Therefore, these commenters contended that altering the body of mortgage disclosures requires a reconstruction of the entire loan delivery system for creditors. According to these commenters, the new forms impose several significant changes to how real estate closings are handled, causing dramatic systemic effects on the nature of the relationship among the parties. For example, these commenters pointed out that the rule impacts the relationship between creditors and settlement agents as the creditor will now be responsible for the Closing Disclosure.

Some industry commenters stated that they confirmed with their compliance system vendors that it will take a considerable period of time to construct new disclosure and compliance arrangements, including time to develop and test new systems, provide creditors the chance to review vendor systems for compliance with the rules and integrate the new systems into their systems and product lines, and build in time to troubleshoot and test these systems as a means of quality control. A GSE commenter argued that software release dates are often set months, even a year, in advance, and if the industry is implementing this rule at the same time as the other Title XIV Rulemakings, it may need a longer implementation period. Another industry commenter contended that technology systems will require an extensive coding and reprogramming process. In addition, according to this commenter, other forms used at closing are based on the HUD-1, and so those forms will need to be reprogrammed accordingly as well. Several commenters argued that something as simple as creating a multi-sided document is a huge technical endeavor. A trade association commenter argued that because of the lack of specific hard-coded items on the Closing Disclosure, and because of the alphabetical order requirement for the listing of closing costs, effective implementation will require developing a more dynamic software program. Due to the significant changes from the current disclosure forms and processes, a trade association commenter contended that the industry will need roughly 24 months to implement the disclosures and rule once they are final. A law firm commenter contended that the time required for many of the changes, such as the disclosure changes and the data retention requirements, is cumulative, rather than concurrent, because many elements of the disclosures require independent systems development and engineering.

A GSE commenter urged the Bureau to develop a reasonable implementation plan that focuses on resolving data standardization issues, allows the States with existing exemptions to amend relevant laws and regulations to provide for State integrated disclosure forms that are substantially similar to the Bureau's disclosure forms, and allows large and small creditors to implement the Bureau and State regulations at the same time. This commenter argued that, by doing so, the Bureau's goals in promulgating the integrated disclosures will be better achieved and the overall costs and burdens on the industry – and, ultimately, consumers – will be mitigated most effectively.

Some commenters pointed to HUD's 2008 RESPA Final Rule as further justification for an 18 to 24-month implementation period. The commenters noted that when HUD revised

Regulation X in 2008,[312] it provided a 13.5-month compliance period that proved insufficient, causing HUD to announce six weeks before the effective date that it would refrain from enforcing the new rules for the first four months following the effective date. One commenter noted that at roughly the same time as the implementation of HUD's 2008 RESPA Final Rule, the Board implemented the MDIA amendments to TILA which established new timeframes for the disclosure process and new requirements for redisclosure where costs increase beyond tolerances. A number of industry commenters and a trade association commenter noted that the implementation of HUD's 2008 RESPA Final Rule also caused HUD to issue several iterations of HUD's RESPA FAQs, each with a growing number of technical questions, in part because the application of the new regulation to the hundreds of transactional variances across all states and loan types posed insurmountable challenges. One trade association commenter argued that these post-implementation guidance updates created compliance uncertainty, because some loans that were compliant upon origination became non-compliant as provisions were amended and commentary and clarifications were issued or updated.

Since the Bureau is comprehensively revising regulations for both RESPA and TILA, these commenters argued that clearly a longer implementation period is warranted than was provided for HUD's 2008 RESPA Final Rule. A law firm commenter pointed to the implementation period of HUD's revised RESPA GFE and RESPA settlement statement, and argued that the integrated forms will require an even greater overhaul of systems because they contain very different elements, such as the projected payments table, which is very different from the current interest rate and payment summary table. These commenters also argued that,

[312] As described above in part II.B, HUD's 2008 RESPA Final Rule required new disclosure forms and contained new rules, including a new definition of application and tolerances for estimated settlement charges, which were intended to facilitate consumer shopping and protect consumers from increased charges at closing.

in light of that past experience and confusion and disorder within the industry that resulted, it is especially imperative that this reform is done correctly, rather than quickly, and that any changes to the current system should be established and implemented judiciously.

Separate Effective Dates for Different Sizes and Types of Entities

During the Small Business Review Panel process,[313] the Small Business Review Panel received feedback from small entity representatives requesting that the Bureau provide a substantial compliance period after issuance of the final rule. The small entity representatives reported that they anticipated significant one-time software upgrade and training costs, though their estimates varied greatly, and they generally stated that these costs would be less burdensome if the Bureau provided a substantial compliance period to upgrade systems and to train staff. The small entity representatives requested a variety of implementation periods, however.[314] Accordingly, as discussed above, the Bureau solicited comment on whether the exemption period should differ depending on the size of the business entity.

While one trade association commenter urged the Bureau to issue final rules with an effective date that is a minimum of 24 months after publication for financial institutions with less than $10 billion in assets, commenters generally disfavored a bifurcated approach and emphasized that it would be unreasonable and disruptive to adopt different implementation timeframes for entities of different sizes.

For instance, a credit union trade association commenter argued that all institutions should be subject to the same effective date. While recognizing that it may take smaller entities more time to harmonize their practices and procedures with the integrated disclosures, one State

[313] *See* part III.D, above, for a discussion of the Bureau's Small Business Review Panel process.
[314] Small Business Review Panel Report at 19. As noted in chapter 8.1 of the Panel Report, the small entity representatives generally asked for an implementation period ranging from 12 to 18 months.

attorney general and several industry commenters did not believe that the Bureau should grant smaller entities more time to comply with the final rule than larger entities. These commenters argued that the same implementation period for all covered entities will allow consumers to comparison shop. In addition, these commenters reiterated the Bureau's concern that a bifurcated implementation period could be detrimental to consumers, as during any time period where larger entities were required to comply with the final rule but smaller entities were not, consumers could potentially receive different disclosures depending on which business entity they worked with to obtain credit. This would not only be confusing to consumers, but, potentially, confusing to lending entities, especially in those situations where a small entity acts as a correspondent lender for a large entity.

One trade association commenter argued that because lending is interconnected – large creditors use small creditor correspondents, which use vendors – there is a need to make sure that the rule is being implemented by small creditors regardless. A law firm commenter contended that a separate effective date for small entities would not be helpful, because forms vendors will have to be ready at the earliest effective date anyway. This commenter suggested instead that the Bureau consider delaying the effective dates of certain elements of the rule, such as applicability to construction loans, as doing so would neither result in consumers receiving different disclosures from different creditors nor negatively affect consumer shopping.

Several commenters favored a grace period after the effective date since this will be such a large undertaking. They noted that they learned from implementing HUD's 2008 RESPA Final Rule that additional time is needed after creditors make all of their system changes to work out the kinks, and asserted that this rule imposes much more extensive changes than HUD's 2008 RESPA Final Rule. A law firm commenter also suggested a temporary reprieve from liability if a creditor can demonstrate a good faith effort to comply, similar to HUD's enforcement reprieve for the revised RESPA GFE and RESPA settlement statement. One commenter recommended a grace period of 90 days.

A State housing agency association asked the Bureau to extend the effective date for housing finance agencies (HFAs). This commenter contended that it is entirely appropriate for the Bureau to grant HFAs additional time to adopt the integrated disclosures.

Bureau Guidance During the Implementation Period

Various commenters anticipated that the Bureau will need to provide guidance during the implementation period because of the many interpretive and technical issues that will arise. Some commenters urged the Bureau not to require implementation until the Bureau has the chance to provide guidance through iterations of rules and disclosures. According to these commenters, implementing revised mortgage disclosure forms is unquestionably a costly, time-consuming task for all, and rules that need to be implemented without adequate guidance increase costs yet further. Several industry commenters reminded the Bureau to be aware of the effect that providing guidance through frequently asked questions (FAQs), clarifications, and amendments can have on development and implementation when determining an implementation period. Some commenters urged an implementation period of 24 months in part because they anticipate that the Bureau will need to provide significant, additional guidance at a later date on the use of the Loan Estimate and Closing Disclosures and other related issues, in which case the industry will need time to analyze and comply with the guidance.

One trade association commenter argued that the Bureau should include a period for stakeholder questions and Bureau responses to those questions, and that the implementation period should begin only after all questions are addressed. Several trade association and industry commenters suggested that the Bureau adopt an implementation period timeframe whereby it would conduct meetings with industry after the rule is finalized and then issue an extended commentary six months after issuance to address concerns raised at those meetings.

In light of the above concerns, some commenters suggested that the Bureau adopt a staged implementation period to allow for the most effective and efficient rollout. According to these commenters, the first stage would involve the Bureau accepting questions orally and in writing from creditors, systems providers, and other stakeholders, through workshops and webinars for at least the first three months after the rule is finalized. The second stage would involve the Bureau posting answers to questions publicly on the Bureau's website as FAQs. The third stage would involve providing the public an opportunity to comment on the FAQs and, after consideration of those comments, the Bureau would incorporate any necessary changes into the official commentary. Finally, the fourth stage would commence an implementation period of at least 18 months to allow training, systems changes, and other implementation actions to begin in earnest. This last stage would follow either the second or third stage, as described above and depending on the extent of guidance needed. According to these commenters, this approach would ensure prompt and reliable guidance while, at the same time, providing an efficient and reasonable implementation period.

C. The Effective Date

This final rule is effective on August 1, 2015. The final rule applies to transactions for which the creditor or mortgage broker receives an application on or after that date, with the exception of new § 1026.19(e)(2), and the amendments of the final rule to §§ 1026.28, and 1026.29, which are effective on August 1, 2015, because they apply without respect to whether an application has been received on that date.

Applications Received on or After

The Bureau considers the amendments in this final rule to create a single integrated disclosure regime. The Bureau also understands that the current disclosures under TILA and RESPA consist of one disclosure regime under each statute, and therefore does not believe that a consumer receiving the current disclosures for a transaction for which the creditor receives an application before the effective date should subsequently receive the Bureau's new integrated disclosures. Accordingly, the effective date for this final rule applies to applications received by a creditor or mortgage broker on or after August 1, 2015 (with the exception of new § 1026.19(e)(2) and amendments of the final rule to provisions regarding preemption of State law under §§ 1026.28(a)(1) and 1026.29).

This means that if the creditor receives an application before the August 1, 2015 effective date, not only shall the current early disclosures (*i.e.*, the early TILA disclosure and the RESPA GFE) be provided for the transaction, but the current final disclosures (*i.e.*, the final TILA disclosure and the RESPA settlement statement) shall also be provided for that transaction, even when consummation of the transaction will occur, and thus the final disclosures will be provided, after August 1, 2015. For example, if a creditor receives an application for a mortgage loan subject to § 1026.19(e) and (f) on July 31, 2015, the current rules will apply for that transaction from application through consummation and thereafter. Accordingly, the creditor would provide the current early disclosures within the timeframes required under the current rules. In addition, even if settlement occurred 60 days later, after August 1, 2015, the current final disclosures would be provided to the consumer. Further, the creditor and other parties, as applicable, would also have to comply with any other rules that apply under the current regulatory regime with respect to the transaction, including existing requirements relating to tolerances for increases in estimated settlement charges under Regulation X, receipt by the consumer of the final TILA disclosure at least three business days before consummation when the disclosed APR becomes inaccurate under the tolerances provided under TILA, and responsibilities of the person conducting the settlement for providing the RESPA settlement statement. This final rule and its new integrated disclosure requirements would not apply to the transaction because the final rule is only effective for transactions for which the application is received on or after August 1, 2015 (with the exception of §§ 1026.19(e)(2), 1026.28, and 1026.29, as described above).

The Bureau notes that the above-described approach to the effective date has become a standard feature of recent mortgage disclosure rulemakings by both the Board and HUD. For example, as described above in part II.B, in HUD's 2008 RESPA Final Rule, HUD issued extensive revisions to the RESPA GFE and RESPA settlement forms required under Regulation X, as well as revisions to other requirements relating to mortgage loan transactions. HUD applied the final rule prospectively to mortgage applications received on or after January 1, 2010. 73 FR 68204 (Nov. 17, 2008); HUD RESPA FAQs p. 1, #1 ("GFE-General") (requiring use of the revised RESPA GFE beginning January 1, 2010 and use of the revised RESPA settlement statement for all transactions in which the revised GFE was used; and permitting the continued use of the prior RESPA settlement statement for applications received prior to January 1, 2010). Similarly, in 2010, the Board issued the MDIA Interim Rule, which included substitution of the interest rate and payment summary tables for the then-existing payment schedule in the TILA disclosure requirements. 75 FR 58470 (Sept. 24, 2010). The Board required compliance with these requirements for transactions for which an application for credit was received by the creditor on or after January 30, 2011. In addition, the Board has issued other final rules amending requirements relating to mortgage loan transactions that have become effective based on the date the creditor receives the consumer's application. *See* 73 FR 44522, 44594-5 (July 30, 2008). The Bureau has also followed this approach in its other mortgage rulemakings. For example, the Bureau's 2013 ATR Final Rule becomes effective based on the date the creditor receives the consumer's application.[315]

The Bureau believes that following this approach in this final rule provides a benefit to consumers by facilitating a more effective, consolidated disclosure scheme for their transactions. The Bureau believes that providing consumers with the current RESPA GFE and early TILA disclosure for applications received before the August 1, 2015 effective date, followed by the Closing Disclosure that is being implemented under this final rule would be detrimental to consumers because consumers would be confused if they had to compare two substantially different sets of disclosures at or before consummation. HUD has designed the RESPA GFE and the RESPA settlement statement to provide information to the consumer that is intended to enable comparisons between the two disclosures. For example, the RESPA settlement statement identifies next to the labels for certain final settlement charges the location where the estimate for that charge is displayed on the RESPA GFE. In addition, the early and final TILA disclosures contain the same sets of information and the model forms under Regulation Z do not differentiate between the two disclosures (other than rules with respect to the labeling of estimates). If consumers were to receive the early TILA disclosure and RESPA GFE at application and then receive the Closing Disclosure three business days before consummation, they would not be able to use these aspects of the disclosures to compare their estimated and final loan terms and costs using the current disclosures. Accordingly, making the date the application is received the key date for determining whether the current disclosure rules or the

[315] *See* 78 FR 6408, 6555 (Jan. 30, 2013); 78 FR 35430, 35492 (June 12, 2013).

Bureau's new disclosure rules apply to the transaction will enable consumers to reap the benefits of either the current consolidated disclosure schemes or the Bureau's new consolidated disclosure scheme.

Although the Bureau's Quantitative Study has concluded that its integrated disclosures perform better than the current disclosures at enabling the comparison of estimated and final loan terms and costs, *see* Kleimann Quantitative Study Report at 46-47, the Bureau believes it has achieved this enhanced performance by matching the designs of the Loan Estimate and Closing Disclosure as closely as possible. In addition, although the Closing Disclosure also performed better than the current final TILA disclosure and RESPA settlement statement with respect to questions that did not require such comparison and merely required respondents to identify or understand the final loan terms and costs, *see* Kleimann Quantitative Study Report at 47-48, the Bureau believes that the consumer confusion that would result upon receipt of a disclosure three business days before consummation that is substantially different from that received at application would outweigh any such benefit.

For these reasons, the Bureau believes this approach will make it easier for consumers to understand how and why any costs may have changed during the transition to the integrated disclosures required under this final rule. The Bureau believes that this approach will better ensure that consumers receive the full benefits of the integration without disruption and allow the Bureau to coordinate the changes in a way that improves overall consumer understanding of the disclosures and their transactions. Accordingly, the Bureau believes that consumer understanding is aided under this approach, and believes the approach is appropriate to improve the informed use of credit.

The Bureau also believes this approach facilitates compliance with the integrated disclosure requirements, which is one of the purposes of the integrated disclosures as mandated by the Dodd-Frank Act. Making the application date of a transaction the key date for determining whether the current or new disclosure rules apply enables creditors to use one computer system for that transaction from application through consummation and settlement. Creditors would not need to transfer pending transactions from their current origination, disclosure, and compliance computer systems to their new systems while the transaction is in process. In addition, new requirements, such as those restricting the amounts by which certain charges are permitted to increase from their estimates and the timing of receipt of certain disclosures by consumers would not apply retroactively to transactions that began under the current rules. For these reasons, the Bureau believes applying the effective date of this final rule (with the exception of §§ 1026.19(e)(2), 1026.28, and 1026.29 of the final rule, as noted above) to applications received on or after August 1, 2015 will facilitate compliance.

Accordingly, the Bureau believes making the final rule applicable to transactions for which the creditor or mortgage broker receives an application on or after the effective date (with the exception of §§ 1026.19(e)(2), 1026.28, and 1026.29 of the final rule, as described above) is consistent with the statutory purposes of the integrated disclosure requirements in Dodd-Frank Act sections 1098 and 1100A and past effective dates provided by other Federal regulatory agencies for the implementation of mortgage rulemakings. The Bureau believes this effective date will facilitate compliance with the disclosure requirements for industry and ensure the final rule provides the substantial benefits for consumers intended by the Bureau, without detracting from consumer understanding of mortgage loan transactions during the transition to the integrated disclosures.

The Bureau is adding comment 1026.1(d)(5)-1 to provide clarity regarding the application of the effective date to transactions covered by the final rule. The comment summarizes the effective date and sets forth examples to illustrate the application of the effective date. The Bureau believes this comment will facilitate compliance with the final rule, which is one of the purposes of the integrated disclosures, as discussed above.

Predisclosure Activity

As described above, the final rule generally applies to transactions for which the creditor or mortgage broker receives an application on or after August 1, 2015. Section 1026.19(e)(2) of the final rule includes restrictions on certain activity prior to a consumer's receipt of the disclosures required by § 1026.19(e)(1)(i), which may occur prior to a consumer's submission of an application under § 1026.19(e). These include § 1026.19(e)(2)(i), which restricts the fees that may be imposed on a consumer, § 1026.19(e)(2)(ii), which requires a statement to be included on written estimates of terms or costs specific to a consumer, and § 1026.19(e)(2)(iii), which prohibits creditors from requiring the submission of documents verifying information related to the consumer's application. These provisions under § 1026.19(e)(2) are effective on August 1, 2015, regardless of whether an application has been received on that date, because the restricted activity may occur before such receipt. The Bureau believes this effective date for the restrictions under § 1026.19(e)(2) will benefit consumers and encourage consumer shopping for mortgage loans, because the provisions under § 1026.19(e)(2) will restrict such activity beginning August 1, 2015, regardless of whether or not consumers submit an application to the creditor. The Bureau believes that an approach that applies these provisions only to transactions for which the creditor has received an application would diminish the benefits of these provisions of the final rule to consumers, and would also not facilitate compliance, because it would be confusing to industry to implement the transition to these new requirements.

State Law Preemption

As described above, the final rule generally applies to transactions for which the creditor or mortgage broker receives an application on or after August 1, 2015. The final rule amends § 1026.28(a)(1) and commentary to § 1026.29 of Regulation Z, regarding the preemption of State law. The final rule amends § 1026.28(a)(1) to provide that State law requirements that are inconsistent with the requirements contained in the final rule are preempted to the extent of the inconsistency and provide a procedure under § 1026.28(a)(1) for a creditor, State, or other interested party to request the Bureau to determine whether a State law requirement is inconsistent with §§ 1026.19(e) and (f), 1026.37, and 1026.38. The final rule amends comments 29(a)-2 and -4 to § 1026.29(a), which provides procedures for a State to apply to the Bureau to exempt a class of transactions within the State from the requirements of chapter 2 (Credit transactions) or chapter 4 (Credit billing) of TILA and the corresponding provisions of Regulation Z. See the section-by-section analyses of §§ 1026.28 and 1026.29 above for additional detail regarding these amendments.

The amendments to § 1026.28 and the commentary to § 1026.29 are effective on August 1, 2015, without respect to whether an application has been received on that date. The Bureau believes that an approach that applies these provisions only to transactions for which the creditor or mortgage broker has received an application would not facilitate compliance, because it would be confusing, and potentially burdensome for industry to implement. For example, § 1026.28(a)(1), as noted above, permits the public to submit requests to the Bureau for a determination of whether a State law requirement is inconsistent with the integrated disclosure requirements of §§ 1026.19(e) and (f), 1026.37, and 1026.38. The public should be able to submit such a request prior to the receipt of an application, and such a request should be able to apply to the State law requirements generally, rather than a particular transaction for which an application was received. The Bureau believes this approach furthers one of the purposes of the integrated disclosures under Dodd-Frank Act sections 1098 and 1100A, which is to facilitate compliance with the mortgage disclosure requirements of TILA and RESPA sections 4 and 5.

As discussed above, the Bureau is adding comment 1026.1(d)(5)-1 to provide clarity regarding the application of the effective date to transactions covered by the final rule. The comment summarizes the effective date and clarifies that new § 1026.19(e)(2), and the amendments to § 1026.28(a)(1) and the commentary to § 1026.29 in the final rule become effective on August 1, 2015. The comment also sets forth examples to illustrate the application of the effective date, including examples of the effective date of § 1026.19(e)(2) and the amendments to § 1026.28(a)(1) of the final rule.

Implementation Period

For the reasons discussed below, the Bureau believes that the implementation period is consistent with the statutory purposes of the integrated disclosure requirements in Dodd-Frank Act sections 1098 and 1100A and past periods provided by Federal regulatory agencies for the implementation of mortgage disclosure rulemakings. The Bureau believes this period, on balance, will afford industry sufficient time to implement comprehensive systems changes, integrate business practices into the new regulatory requirements of this final rule, and train staff, all of which will ensure the final rule fully provides the substantial benefits for consumers intended by the Bureau. The Bureau also believes this time period will assist in facilitating an efficient conversion of the supervisory processes of the Federal regulatory agencies responsible for examining creditors for compliance with the final rule.

TILA section 105(d). As discussed above, the Dodd-Frank Act does not impose a deadline for issuing a final rule and disclosures in connection with the mandate to integrate disclosure requirements under TILA and RESPA, or provide a specific amount of time for entities to come into compliance after the final rule is issued. However, under TILA section 105(d), a regulation requiring any disclosure that differs from the disclosures previously required shall have an effective date no earlier than “that October 1 which follows by at least six months the date of promulgation,” except that the Bureau may at its discretion lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements, or shorten the period where the Bureau finds that such action is necessary to prevent unfair or deceptive disclosure practices. 15 U.S.C. 1604(d).

The final rule significantly strengthens and streamlines the mortgage loan disclosures provided to consumers three days after application and at or before mortgage loan closings. The Bureau believes the final rule will deliver significant value to consumers, among other ways, by helping: (1) to ensure that they understand the costs, risks, and benefits of their loans at a time when they can still negotiate the terms of or walk away from the transaction; and (2) to minimize changes at the closing table and make it easier for consumers to understand how and why any costs may have changed. Although the Bureau desires to have the rule take effect as soon as realistically possible given its value for consumers, the Bureau has decided to use its discretion under TILA section 105(d) to lengthen the period in this instance. As described below, after consideration of public comments on this issue, the Bureau believes the changes the final rule will require to both the origination and closing processes warrant an effective date of August 1, 2015.

Comments generally support an implementation period of at least 18 months. As discussed above, virtually all comments supported an implementation period of at least 18 to 24 months for this final rule. While several commenters advocated for shorter time periods, the Bureau believes that these suggestions are neither practical nor feasible for industry as a whole, based on the Bureau's understanding of the tasks involved in implementing this final rule as described by commenters and the experience of industry in implementing recent mortgage rulemakings requiring similarly extensive revisions to software systems, as described below.

Significant changes throughout the industry. The Bureau understands that implementation of this final rule will impose significant changes and costs across the residential real estate and mortgage lending industry. As discussed above, many commenters noted that implementation of the final rule goes farther than just new disclosure forms. The final rule affects a broad range of industry, including lenders, title companies, escrow agents, closing attorneys, document software providers, mortgage brokers, and real estate agents. The final rule also affects the interactions between these sectors of industry. For example, as some commenters noted, the final rule makes several significant changes to how real estate closings are handled – creditors will be responsible for providing the Closing Disclosure (although the final rule expressly permits settlement agents to provide it as well) – and transforms the relationship between creditors and settlement agents.

The scope of software systems changes required for each sector of industry to implement the necessary amendments and to make their systems interact seamlessly with other sectors of industry is substantial. The changes in this final rule will require updates to loan origination software and origination platforms; the development of systems to produce the integrated disclosures by third-party document companies used by creditors; the development of new systems for the title insurance and settlement services industry to produce the new integrated disclosures and integrate business practices, such as disbursements of settlement funds, into such software systems, including related systems in support of escrow agents and closing attorneys. Moreover, the title insurance and settlement services industry will need to prepare their systems to interact with the systems of multiple lenders. In addition, as many commenters noted, many of these industry participants in these different sectors of industry will need to update their compliance systems, internal quality control processes, and internal audit processes.

Further, these parties may need to revise legal agreements between them to reflect changes in regulatory responsibilities under the final rule. As discussed above, some commenters noted that all loan products, sales and marketing arrangements, compensation schemes, business relationships, and transaction timing requirements are built on the basis, or in consideration of, the RESPA and TILA statutes. Therefore, the Bureau understands that altering the body of mortgage disclosures requires a reconstruction of the entire loan delivery system for creditors. Given the unprecedented scope and broad impact of these new requirements, the Bureau understands that creditors and servicers will need to define and implement new business models that are sustainable in this changed regulatory environment.

Lastly, this broad range of industry will need to spend time before even beginning to revise their software systems, or discussing the interaction of such systems, to review the final rule and consult with their compliance staff. Additionally, industry may consult with counsel or compliance consultants before beginning such revisions or during such revisions. The different sectors of industry may also need to ensure they have a similar understanding of the requirements of this final rule to ensure their systems interact effectively. Accordingly, the Bureau believes this final rule will require more time for systems changes than a rule that affected only one sector of industry.

Staff training. The Bureau also understands that industry will be required to train vast numbers of loan origination, title insurance and settlement agent, real estate agent, and other settlement service provider personnel. In addition, the Bureau understands that much of this training cannot occur concurrently with the software systems changes described above, and can only be conducted after the software changes have been completed, so the staff personnel can train on the new software systems. The Bureau also understands that training will need to include a broad range of industry personnel, including loan originators, personal bankers doing home equity loans, loan processors, loan closers, third-party closing agents, customer service representatives, settlement agents, escrow agents, real estate agents, as well as back office personnel who may need to complete administrative functions with respect to the new integrated disclosures.

Consistent with implementation periods for past mortgage rulemakings requiring extensive software systems changes. The Bureau believes that recent rulemakings affecting the residential mortgage lending industry that required extensive software systems changes provide a basis on which to determine an appropriate implementation period for this final rule. Several commenters noted that the implementation of HUD's 2008 RESPA Final Rule effectively necessitated a period of approximately 18 months. Specifically, HUD's 2008 RESPA Final Rule provided an implementation period of approximately 13 and a half months after publication of the rule in the *Federal Register*, which final rule involved fewer changes to the mortgage disclosures. Although HUD significantly revised the design of the RESPA GFE in its 2008 RESPA Final Rule, it made fewer design changes to the RESPA settlement statement in that final rule. Even in that case, although HUD provided approximately 13 and a half months to implement the rule, HUD determined that it was necessary to exercise "restraint in enforcing" the new requirements for the first four months the rule was effective in the case of FHA-approved creditors that have “demonstrated that they are making a good faith effort to comply with RESPA’s new requirements.”[316]

Similarly, when the Board amended the requirements with respect to data collection under the Home Mortgage Disclosure Act and its Regulation C in 2002, the Board initially provided approximately 10 and a half months from the publication of the final rule in the *Federal Register* to implement the amendments.[317] However, the Board concluded several months later that it was necessary to extend the implementation period by one year because of operational difficulties industry experienced in implementing the rule, which resulted in approximately a 22-month implementation period.[318]

Implementation of other rulemakings. The Bureau understands that the residential mortgage lending industry is, at the time of issuance of this final rule, implementing the Title XIV Rulemakings, which become effective in January 2014. As a result, the mortgage industry is facing major regulatory amendments impacting both loan origination practices and servicing. In addition, as noted by some commenters, some entities in the residential mortgage lending industry will be required to implement other rulemakings promulgated by other Federal agencies under the Dodd-Frank Act or in response to the recent financial crisis, such as rulemakings affecting capital and leverage standards for banking organizations and risk retention rules in residential mortgage-backed securitizations. Some of these rulemakings by other Federal agencies are expected to have effective dates or be phased in over the same timeframe as this

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[316] Press Release, U.S. Dep’t of Hous. & Urban Dev., HUD No. 09-215, *HUD Announces Restraint in RESPA Enforcement for First Four Months of New Rule*, (Nov. 13, 2009), available at http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2009/HUDNo.09-215.

[317] 67 FR 7222 (Feb.15, 2002) (final rule expanding the coverage of HMDA, redefining key terms, and requiring the collection of additional categories of data, including loan pricing data).

[318] 67 FR 30771 (May 8, 2002) (delaying the effective date of amendments to HMDA reporting requirements by one year because some entities were not able to implement them).

rulemaking. Accordingly, the Bureau understands that industry resources might be strained from the implementation of other rulemakings. Given the breadth of the systems changes required to implement this final rule, the Bureau believes that providing sufficient time to implement this final rule in the context of the regulatory environment in which industry is operating is an important consideration. The Bureau believes that providing a reasonable implementation period, in light of other implementation tasks industry must complete for these other rulemakings, will help facilitate compliance with the disclosure requirements of this final rule and ensure an effective implementation of the final rule for consumers.

Concerns with an inadequate implementation period. The Bureau is concerned that an implementation period that does not allow enough time to complete the transition to the requirements of the final rule would have significant costs and inconveniences for both consumers and industry. For example, if implementation is not completed effectively, consumers could experience delayed closings due to flaws in computer systems or lengthy interactions between creditors and settlement agents due to insufficient time to work out processes, or poor closing experiences due to an insufficient time to train industry personnel. Based upon the comments received, the Bureau is concerned that some creditors might seek to eliminate operational risk through scaling back or discontinuing their lending activities if the duration of the implementation period is insufficient, which would be harmful to both consumers and the industry and lead to access to credit concerns. As discussed in part II.E above, the Dodd-Frank Act establishes two goals for the TILA-RESPA mortgage disclosure integration: to improve consumer understanding of mortgage loan transactions; and to facilitate industry compliance with TILA and RESPA. Dodd-Frank Act sections 1098 and 1100A. In adopting an effective date of August 1, 2015, the Bureau has therefore balanced the imperative to implement the new, more beneficial disclosures as quickly as realistically possible with the need to minimize costs and disruptions for consumers and industry alike. The Bureau believes, as industry commenters noted above, that a reasonable implementation period will better ensure that consumers receive the full benefits of the integration without disruption.

Application of the effective date to all creditors. The Bureau also believes that staggered effective dates for different sizes of entities would not be practicable, and has decided not to adopt a separate effective date for small entities. Although some commenters advocated providing more time for small businesses to come into compliance with the final rule, most commenters generally disfavored a separate effective date. The Bureau has concluded that a separate small entity effective date would not be practicable for several reasons. First, as noted by some commenters, because small businesses rely heavily on third-party technology providers, a delay would not be very useful. The Bureau understands that small creditors almost universally use third-party technology vendors (*i.e.*, LOS, document preparation vendors, etc.), which will have to be ready at the earliest effective date even if there were a separate later effective date for small entities, because such vendors service lenders of all sizes. Second, the Bureau remains concerned that a bifurcated implementation period could be detrimental to consumers since comparison shopping would be complicated for consumers during the interim period. The Bureau believes that providing the same implementation period for all creditors will allow consumers to comparison shop using the same disclosures from the date they become effective. The Bureau is concerned that consumers will be confused if they have to compare loans between lenders using two substantially different sets of disclosures. Third, information flow would also be complicated for industry and secondary market investors during the interim period. In many cases, as noted by commenters, small creditors act as correspondent lenders for a larger creditor, and small mortgage brokers provide disclosures for loans provided by larger creditors. It may be unclear which disclosures are effective in such cases. For the same reasons, the Bureau has decided not to adopt a separate effective date for housing finance agencies.

With respect to the commenters that requested a grace period, delayed enforcement period, or a temporary reprieve from liability after the effective date, the Bureau believes that the implementation period for the final rule provides an appropriate and reasonable implementation schedule that balances the importance of putting new requirements in place as quickly as possible for consumers with the need to allow industry sufficient time to implement the new disclosure requirements effectively and efficiently. Accordingly, the Bureau has decided to mandate one effective date, and not adopt a staggered approach that includes a grace period, delayed enforcement period, or some other form of temporary reprieve from the requirements to comply with the final rule.

Implementation assistance. As several industry commenters suggested, the Bureau intends to provide guidance to industry regarding the implementation of this final rule. The Bureau believes that guidance in the form of plain language compliance guides, conducting roundtable meetings with stakeholders, and other compliance aids such as videos and reference charts, will assist industry in achieving an efficient implementation of the final rule. In addition, as noted below in the section-by-section analysis of § 1026.25, the Bureau will continue to monitor the GSEs' efforts to finalize their standardized dataset for the Closing Disclosure, the "Uniform Closing Dataset (UCD)." The Bureau believes that utilization of such a standardized dataset may enable certain efficiencies in industry's implementation of this final rule.

However, the Bureau does not believe that a staged implementation of the final rule, or the Bureau's issuance of several iterations of the rule and disclosures are necessary, as some commenters suggested. The Bureau understands that providing guidance through FAQs throughout the implementation period has the potential to negatively impact industry's efficiency in implementing the rule and understands the experience of industry in incorporating FAQs during its implementation of HUD's 2008 RESPA Final Rule. The Bureau believes that an effective date of August 1, 2015 will allow enough time for industry to analyze and incorporate any such guidance or compliance aids the Bureau provides and complete implementation in an efficient manner. In addition, the Bureau believes the effective date of this final rule will allow enough time for the Bureau to respond to stakeholder questions regarding the final rule, such as in roundtable meetings, and for industry's incorporation of such guidance.

Conclusion

For the aforementioned reasons, the Bureau believes that an effective date of August 1, 2015, provides a reasonable implementation period that will ensure that consumers receive the full benefits of the integration without disruption. The Bureau believes that this effective date ensures that the Bureau's goals in promulgating the integrated disclosures will be achieved and the overall costs and burdens on the industry – and, ultimately, consumers – will be mitigated most effectively.

The Bureau finds that this approach carefully balances the two statutory objectives for the TILA-RESPA mortgage disclosure integration set forth in sections 1098 and 1100A of the Dodd-Frank Act: to aid consumer understanding of mortgage loan transactions; and to facilitate industry compliance with TILA and RESPA.

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

A. Overview

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission regarding consistency with any prudential, market, or systemic objectives administered by such agencies.[319] The Bureau also held discussions with or solicited feedback from the United States Department of Agriculture Rural Housing Service, the Farm Credit Administration, the Federal Housing Administration, the Federal Housing Finance Agency, the United States Department of Housing and Urban Development, and the Department of Veterans Affairs regarding the potential impacts of the final rule on those entities' loan programs.

The Bureau is issuing final rules and forms that combine the pre-consummation TILA and RESPA disclosures for loans subject to either law or to both laws, pursuant to sections 1032(f), 1098, and 1100A of the Dodd-Frank Act. This rule finalizes most aspects of the proposed rule issued in July 2012 that implemented section 1032(f) of the Dodd Frank Act. Sections 1098 and 1100A of the Dodd-Frank Act, which amended RESPA and TILA, respectively, to mandate the integrated disclosures, state that the purposes of the disclosures are to facilitate compliance with the disclosure requirements of the statutes and "to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures." Dodd-Frank Act sections 1098(2)(A), 1100(A)(5). The Bureau is also implementing several new disclosure requirements added to TILA and RESPA by the Dodd-Frank Act. In addition, the Bureau is revising current regulations implementing the pre-consummation disclosure requirements of TILA and RESPA to improve consumer understanding of mortgage transactions and upfront disclosure of loan costs

[319] Specifically, Dodd-Frank Act section 1022(b)(2)(A) 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 insured depository institutions and insured credit unions with $10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas.

and terms, consistent with the purposes of TILA and RESPA.

TILA and RESPA currently require creditors and settlement agents to provide consumers who apply for mortgage loans different but overlapping disclosures regarding the loan's terms and costs. This duplication has long been recognized as inefficient and confusing for consumers and industry. Prior to the creation of the Bureau, the Board and HUD independently took steps to address these shortcomings, but neither agency had the authority to combine the duplicative disclosures. On July 21, 2011, the Dodd-Frank Act transferred authority over TILA and RESPA to the Bureau. As noted above, the Dodd-Frank Act specifically directs the Bureau to combine the TILA and RESPA mortgage disclosures.

With respect to each major provision in the final rule, the analysis considers the benefits and costs to consumers and covered persons, and in certain instances considers other impacts. The analysis also addresses comments the Bureau received on the proposed Dodd-Frank Act section 1022 analysis as well as certain other comments on the benefits or costs of provisions of the proposed rule when doing so is helpful to understanding the Dodd-Frank Act section 1022 analysis. Comments that mentioned the benefits or costs of a provision of the proposed rule in the context of commenting on the merits of that provision are addressed in the section-by-section analysis of that provision above. In this respect, the Bureau's analysis under Dodd-Frank Act section 1022 is not limited to the discussion in this part VII of the final notice. No new datasets were used in analyzing the impact of the rule, aside from more current versions of HMDA and Call Reports data.

B. Economic Overview and Provisions to be Analyzed

In this section of the 1022 analysis, the Bureau presents a concise, high-level overview of the costs and benefits discussed in the remainder of the analysis and a brief response to the major comments received with respect to the 1022 analysis that accompanied the proposed rule. This overview is not intended to capture all details and nuances that are provided both in the rest of the 1022 analysis and in the section-by-section analysis in the preamble, but rather to provide an overview of the major costs and benefits of the rule.

1. Major Benefits of the Rule

The major benefits of the rule stem from two key consequences of the rule. The first consequence is disclosure of the terms of the transaction, including loan terms and pricing and other costs, that is easier to understand and that is potentially provided to the consumer earlier in the process than is true today.[320] In the Bureau's quantitative testing, subjects who were given the proposed disclosures answered 79.3 percent of questions correctly, versus 64.5 percent with the existing forms, a 14.8 percentage point, statistically significant, overall improvement.[321] As discussed in section III, for certain important elements, the improvement was substantially greater. The second consequence of the rule that produces major benefits is ensuring that the consumer receives the Closing Disclosure at least three business days in advance of consummation and in a format that tracks the Loan Estimate and thus facilitates easy comparison.[322] This permits consumers to compare their estimated and final loan terms and costs, with sufficient time to identify discrepancies between the Loan Estimate and actual terms of the transactions and without the pressure of doing so at the closing table.

Together, these aspects of the rule will benefit consumers by enabling them to choose loans that are better for them in terms of price or loan features and to know whether they actually

[320] *See* Kleimann Testing Report and Kleimann Quantitative Study Report for more details.
[321] *See* Kleimann Quantitative Study Report at 41.
[322] While some of the amounts in the form might still change in the last three days, consumer will have at least three days to consider the loan type, the length of the loan, APR (up to 1/8th of a percentage point), and, if it is one of the terms, a prepayment penalty.

get the price and loan terms that they expected when they decided which loan to take out. The improved disclosure will also give consumers a greater incentive to shop for loan terms as they will be better able to compare competing offers. And, the Loan Estimate and Closing Disclosure will provide consumers with more easily understandable information about the settlement services associated with the loan and which settlement services they can shop for. Therefore, this rulemaking might mitigate two problems in the current real estate market: insufficient amount of shopping by consumers for loans and also for settlement services (mitigated because the disclosures are easier to understand, and thus compare)[323] and consumers not having sufficient time to ask questions, negotiate with respect to terms that have changed, and otherwise adjust the loan terms or settlement costs prior to consummation (mitigated by the clearer and more informative early and closing disclosures, and the three-business-day waiting requirement).

Quantifying these benefits is difficult, as the size of each particular effect cannot be known in advance. Small changes in behavior, however, can have very large aggregate effects, given the size of individual mortgage transactions and the size of the entire mortgage market.

For, example, consider a hypothetical example of a small share of consumers obtaining slightly less expensive mortgage loans, either by making better choices with regard to the loan they choose or because the improved comparability of the form encourages them to shop more. If the new disclosures only affect ten percent of borrowers, and only lower their interest rates by .125% (1/8 of a percentage point, the smallest typical unit of price difference in the mortgage market), this would lead to an annual saving of $1,250,000,000 for mortgage borrowers once all mortgages have been originated with the integrated disclosures and assuming total outstanding

[323] Beales, Howard, Richard Craswell, and Steven Salop. "Information Remedies for Consumer Protection." *The American Economic Review* 71.2 (1981) at 410-413.

mortgage balances were to remain at their current level of roughly ten trillion dollars.

The ability of increased shopping to reduce consumer costs has been demonstrated empirically. For example, one recent study found that consumers financing a $200,000 loan save $2,700 on average by shopping at four brokers instead of shopping at two.[324] African-American consumers and consumers with low education and/or a low credit score shopping for a loan of the same amount save even more on average.[325]

Moreover, if a significant number of borrowers were to increase their amount of shopping and to shop more effectively, this might increase competition in the mortgage loan market and lead to lower prices for all consumers. The Bureau does not possess, and is not aware of, any data that would allow it to quantify with any precision the number of borrowers who would engage in incremental shopping or the effect such shopping would have in reducing the interest rate that borrowers otherwise would pay.[326] The Bureau notes that there were roughly 7,600,000 covered mortgage transactions in 2011, with a total dollar volume of $1,280,000,000,000.[327] Each basis point of reduction in average interest cost to consumers would therefore translate into total consumer savings of $128,000,000 per year.

Similarly, consumers will benefit if the improved disclosures encourage or enable greater shopping for settlement services. While the benefits of shopping for closing services are hard to quantify, if only ten percent of consumers lower their closing costs by ten percent by shopping for some of their settlement services, this would result in approximately $24 of savings per

[324] Woodward and Hall (2012).
[325] Id.
[326] The magnitude of such an impact would depend, in addition to the shopping effects, on the current state of competition in the mortgage market.
[327] Moody's Analytics, Credit Forecast 2012 (2012) ("Credit Forecast 2012"), available at http://www.economy.com/default.asp (reflects first-lien mortgage loans) (data service accessibly only through paid subscription).

transaction on average,[328] or approximately $168,000,000 per year in consumer benefits.[329] And again, as with mortgage pricing generally, there may be further benefits that could flow from more consumers shopping for closing services, which would likely make the closing service market more competitive, resulting in spillover benefits even to the non-shoppers. At a pace of 7,600,000 covered mortgage transactions per year, each dollar of reduction in average closing costs would translate into $7,600,000 in consumer savings.

Better informed consumers might pick not only cheaper loans, but also loans with characteristics that better fit their needs. Other consumers may decide to forgo a mortgage completely after receiving better information about the costs and risks of the mortgages for which they qualify. Again, the benefits of this effect are difficult to measure precisely, but they would appear to be potentially substantial in terms of economic harm averted for homeowners. Some of the loans that were made in the housing bubble that led to the mortgage crisis showcase the potential harmful consequences of consumers choosing loans that are not a good fit for them. Taking out a loan that is a poor match for the consumer's need can have a devastating effect on that homeowner and his or her family; the monetary costs alone are estimated at $7,200.[330] In addition, research has consistently shown that each foreclosure has a number of externalities that will have a negative effect on the other homeowners in the vicinity either through the displacement of demand that otherwise would have increased the neighborhood prices, reduced

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[328] The Bureau assumes that closing costs are $2,400, based on a recent survey by Bankrate.com, available at http://www.bankrate.com/finance/mortgages/closing-costs/closing-costs-by-state.aspx. In this hypothetical scenario, 10% of consumers would save $240 each. This is consistent with a recent study by HUD and the Urban Institute, indicating that borrowers could save hundreds of dollars by shopping for title services and title insurance. See U.S. Dep't of Hous. & Urban Dev. and The Urban Inst., *What Explains Variation in Title Charges? A Study of Five Large Markets* (2012), available at http://www.huduser.org/portal/publications/hsgfin/title_charges_2012.html (HUD Title Charge Study).

[329] Consumers can only shop for some of the services, and the 10% savings number is chosen to reflect that.

[330] http://www.mortgagenewsdaily.com/622008_Foreclosure_Costs.asp.

valuations of future sales if the buyers and/or the appraisers are using the sold foreclosed property as a comparable, vandalism, and disinvestment.[331] Furthermore, as the recent financial crisis demonstrates, the economy as a whole can suffer grave harm if enough consumers find themselves in unaffordable mortgages. For a fuller discussion of the cost and impact of the recent financial crisis, see section II.A above.

In addition to the benefits that may result from the new initial disclosures, the new closing disclosures also may benefit consumers in several ways. First, the new disclosures have the potential to make closings more efficient, and savings to creditors and settlements agents from a more efficient closing process likely will be almost fully passed through to consumers. The potential efficiency gains come from covered persons spending less time explaining the disclosure to the consumer because the new Closing Disclosure is easier to understand and compare to the Loan Estimate and because the new Closing Disclosure will be received three business days in advance of consummation.[332] For these reasons, the Bureau believes that the

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[331] There are several papers documenting various magnitudes of the negative effect on the nearby properties. Data in Massachusetts from 1987 to 2009 indicate that aside from a 27% reduction in the value of a house (possibly due to losses associated with abandonment), foreclosures lead to a 1% reduction in the value of every other house within 5 tenths of a mile. See John Y. Campbell, Stefano Giglio, and Parag Pathak, Forced Sales and House Prices, American Economic Review 101(5) (2011), abstract available at: http://www.aeaweb.org/articles.php?doi=10.1257/aer.101.5.2108. Data from Fannie Mae for the Chicago MSA, show that a foreclosure within 0.9 kilometers can decrease the price of a house by as much as 8.7%, however the magnitude decreases to under 2% within five years of the foreclosure. See Zhenguo Lin, Eric Rosenblatt, and Vincent W. Yao. "Spillover Effects of Foreclosures on Neighborhood Property Values," The Journal of Real Estate Finance and Economics, 2009, 38(4), 387 – 407. Similarly, data from a Maryland dataset for 2006 – 2009 show that a foreclosure results in a 28% increase in the default risk to its nearest neighbors. See Charles Towe and Chad Lawley, 2011, "The Contagion Effect of Neighboring Foreclosures," SSRN Working Paper 1834805.

[332] Research indicates that cognitive processes take more time when evaluating changes in terms. *See, e.g.*, Christopher Chabris *et al.*, *The Allocation of Time in Decision-Making*, Journal of the European Economic Association (2009) (decision-makers spend more time on decisions when their estimates of the value of the best option is closer to the estimate of the value of the next best option); Mieneke W.H. Weenig and Marleen Maarleveld, *The Impact of Time Constraint on Information Search Strategies in Complex Choice Tasks*, Journal of Economic Psychology (2002) (in complex choice tasks, screening is based on fewer attributes when time pressure is imposed).

rule could save up to half an hour of a covered person employee's time or $17 per closing.[333] At a pace of 7,600,000 covered mortgage transactions per year, the rule could result in saving $130,000,000 per year. The Bureau believes that most of these savings are likely to be passed on to consumers since these are marginal savings on each transaction.

Second, because of the format and timing of the new Closing Disclosure, consumers may well be better able to identify discrepancies between the final costs and estimated costs and may as a result be more likely to question and negotiate with respect to these changes. The magnitude of this benefit will depend on the extent to which there are cost increases today and the frequency with which consumers are able to successfully negotiate reductions in such changes. The Bureau is unable to quantify either of these effects, but as noted above each dollar in per-transaction average savings translates into $7,600,000 in aggregate consumer savings.

2. Major Costs of the Rule

The major costs of the rule are one-time costs, primarily labor costs, that creditors[334] and settlement agents[335] will incur to update systems and procedures to comply with the rule.[336] The bulk of the costs imposed on creditors by the final rule are costs associated with implementing new processes necessary for compliance with the new integrated disclosure requirements. These include: training staff, coordinating with settlement agents, changing processes to ensure that

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[333] Based on an estimate of settlement agent total compensation of $34 per hour. Based on 2011Q4 weekly wages in the title abstract and settlement industry from the Bureau of Labor Statistics series ENUUS000405541191, assuming 40 hours worked per week and that 66.6 percent of compensation is wage compensation.

[334] For the purposes of this section, the Bureau examines creditors and mortgage brokers together. Mortgage brokers are likely to incur costs, including training costs, similar to the costs that creditors will incur for their loan officers. The Bureau estimates the number of loan officers involved in rule implementation based on the number of applications and originations that each creditor processes. Thus, some of the staff included in the Bureau's estimate of loan officers are actually mortgage brokers, and thus their costs of complying are included in these calculations, including, for example, the training cost of 8 hours per loan officer.

[335] As used here, "settlement agent" includes anyone who can conduct the settlement, including attorneys or escrow companies in several states.

[336] Some service providers, such as software vendors, will incur costs, as well, as they update their products to comply with the final rule, but these are not covered persons for the purposes of this analysis.

consummation is not delayed due to the three-business-day waiting period, software testing, troubleshooting, and ensuring smooth system functioning across different software programs. The Bureau believes that the cost of updating software will fall largely on software vendors, on which the vast majority of creditors rely.[337] The Bureau believes that the ongoing costs of complying with the regulation will not exceed the costs of complying with the existing regulations, and therefore that the additional ongoing cost of this regulation is zero.

Because the costs of the regulation are one-time investments, firms are expected to amortize this cost over a period of years. In this analysis the Bureau amortizes all costs over five years, using a simple straight-line amortization. The Bureau estimates that the one-time costs to creditors of complying with the rule are approximately $207,000,000 per year for five years. This is approximately $27 per covered transaction, at the 2011 annual rate of originations.[338] In comparison, average creditor profits from originating a mortgage were approximately $1,100 per transaction in 2011 Q4.[339] As noted above, almost all of the costs to creditors are allocations of the labor costs associated with the employees who will perform the implementation work. It is possible that some of the employees involved in implementation will be current employees

[337] Some of the SERs reported that they expect vendors to pass through the cost of updating software to their clients. However, the Bureau is not aware of this happening in connection with the January 2013 rules. Moreover, there is a strong argument grounded in standard economic theory suggesting that vendors should not pass through any of these costs to their clients. Moreover, the Bureau believes that many vendor contracts are structured in a way that vendors would not be able to pass through any cost increase due to a regulation-related software update such as this one.

[338] Note that these costs are fixed. The Bureau assumes that creditors are profit maximizing and will not pass through these costs to consumers. To the extent that this assumption is not satisfied, the Bureau believes that the pass-through will be minimal. While the Bureau does not believe that this will occur and does not have any evidence suggesting that, While it is theoretically possible that some creditors may exit the mortgage market solely due to the final rule, the Bureau is not aware of any evidence supporting this and does not believe it will occur. Even if this were to occur, the Bureau believes that there will be a sufficient number of creditors left in the market to ensure that there is at most a minimal increase in prices.

[339] Mortgage Bankers Association. "MBA: Fourth Quarter Mortgage Banker Production Profits Decline Despite Higher Origination Volumes." 5 April 2012. Available at http://www.mortgagebankers.org/NewsandMedia/PressCenter/80399.htm. Note that profit per origination reported in this quarterly survey increased since then, but the Bureau uses the Q4 2011 number to be consistent with the 2011 HMDA data used throughout the analysis.

assigned to implementation related tasks as part of their regular, ongoing job responsibilities, so creditors' out-of-pocket costs might be less than estimated above. The Bureau estimates that affected employees will spend three percent of their paid time on implementation of the rule during the approximately 18 months of implementation, with many affected employees spending less time than this and a few spending a larger share of their time on implementation.

Settlement agents will also incur costs of new process implementation. Amortized over five years, settlement agents' costs are approximately $67,800,000 per year or $9 per covered transaction. Almost all of these costs are also allocated labor costs. It is possible that some of the employees involved in implementation will be current employees assigned to implementation related tasks as part of their regular, ongoing job responsibilities, so creditors' out-of-pocket costs might be less than estimated above. The Bureau estimates that the share of the affected employees' time devoted to this one-time implementation cost of the rule during the approximately 18 months of implementation is less than four percent.

As noted above, the significant costs incurred by covered persons, both creditors and settlement agents, are one-time implementation costs. The Bureau believes that the ongoing costs of the rule are negligible, relative to existing regulatory requirements, and that there may be ongoing net savings for covered persons due to fewer different forms and lower paperwork burden, including the incorporation of the ECOA Appraisal notification and the RESPA servicing application disclosure into the Loan Estimate. To the extent these savings occur, a portion, if not all, of them might be passed through to consumers.

To the extent that consumers shop more and to the extent that reduces prices in the market, creditors and providers of settlement services listed in the Loan Estimate will lose some of the markup on their products. These costs likely will be alleviated, however, by more consumers entering the market if this price decrease materializes. Again, to the extent that this price decrease occurs, relatively inefficient creditors and service providers are likely to lose market share to the more efficient creditors and service providers. While that is a cost to the less efficient entities, this is arguably a benefit to the market overall. The Bureau does not possess and is not aware of any data that would let it quantify these costs, over and above the hypothetical scenarios described above.

In addition to mandating integration of the TILA and RESPA disclosure requirements, the Dodd-Frank Act added additional mortgage loan disclosure requirements to TILA. The Bureau has decided to implement most of these additional requirement in the final rule – as part of the integrated disclosures where possible, and in separate disclosure forms where necessary. If these additional requirements were implemented separately, the aggregated cost of the multiple rules may have been greater than the cost of this final rule. The separate disclosure forms (the Post-Consummation Escrow Cancellation Notice and the Partial Payment Policy disclosure) will be relatively low cost to implement due to the fact that the creditors will be revamping their origination processes in order to be able to provide the Loan Estimate and the Closing Disclosure. Since the Bureau believes that the marginal cost of implementing the separate forms is insignificant given that the creditors and the vendors are already responsible for changing their processes for the combined TILA and RESPA forms, the Bureau concentrates this analysis on the costs of implementing the combined forms.

3. Comments on the Impact Analysis in the Proposed Rulemaking

Comments received in response to the proposed rule that are relevant to this 1022 analysis mainly addressed (i) the proposed changes to the APR definition, (ii) the proposed requirement that records be maintained in electronic, machine-readable format, (iii) the proposed requirement for a new Closing Disclosure and new three-business-day waiting period if there were non-trivial changes in closing costs after the Closing Disclosure is provided to the borrower, and (iv) the impact of the proposed rule on settlement agents. As noted above, the Bureau has decided not to finalize the proposed APR and machine-readable provisions and the Bureau has narrowed the circumstances in which a new Closing Disclosure and new three-business-day waiting period is required. With respect to the impact on settlement agents, the Bureau addresses these comments in section E below. A number of commenters addressed other elements of the proposed 1022 analysis, and these likewise are addressed in section E below.

Commenters frequently asserted that the costs of implementing the regulation will ultimately fall on borrowers. The Bureau disagrees. Assuming that all of the business entities are profit-maximizing, standard microeconomic theory implies that any fixed costs should not be passed through to the consumer of the product.[340]

A land title association's comment included an economic study of some aspects of the proposed rule. The study assumed without more that because certain costs are currently adjusted within three business days of consummation, the same costs will be adjusted within three business days of consummation at the same frequency even after the final rule takes effect. The study then proceeded to quantify costs of the rule as proposed to consumers and to the economy in general. Some of the sources of crucial assumptions were not cited, such as the assumption described above, making it difficult to evaluate the study's conclusions. Moreover, the study was based on the broad "redislosure triggers" provided for in the proposed rule. Given that the triggers for redisclosure have been considerably narrowed in the final rule (§1026.19(f)(2)(i) and

[340] Note that effectively non-profit entities compete in the same market and will, at least to some extent, follow the same pattern of behavior.

(ii)), aspects of the study based on the proposed triggers are no longer relevant. As a result of these numerous deficiencies, the Bureau was not able to rely on the study in preparing this final 1022 analysis.

4. Major Provisions to be Analyzed

The analysis below considers the benefits, costs, and impacts of the following major provisions of the final rule:

1. The integration of the initial and closing disclosures (the Loan Estimate and Closing Disclosure, respectively);
2. The definition of the term “application”;
3. Permissible changes to settlement costs and redisclosure of initial disclosures;
4. Provision of the Closing Disclosure; and
5. Implementation of certain new disclosures mandated by the Dodd-Frank Act.

With respect to each major provision, the analysis considers the benefits, costs, and impacts to consumers and covered persons. The analysis also addresses certain alternative provisions that were considered by the Bureau in the development of the final rule, but were not adopted.

C. Baseline for Analysis

Section 1022 of the Dodd-Frank Act permits the Bureau to consider the benefits and costs of the final rule solely compared to the state of the world in which the statute takes effect without an implementing regulation. As in the analysis published with the proposed rule, and to provide the public better information about the benefits and costs of the statute, however, the Bureau has chosen to evaluate the benefits, costs, and impacts of the major provisions of the final rule against a pre-statutory baseline. That is, the Bureau’s analysis below considers the benefits, costs, and impacts of the relevant provisions of the Dodd-Frank Act combined with the final rule implementing those provisions relative to the regulatory regime that pre-dates the Dodd-Frank Act and remains in effect until the final rule takes effect.[341] The baseline considers economic attributes of the relevant market and the existing regulatory structure. The Bureau has not received any comments on the baseline used.

D. Coverage of the Final Rule

The final rule requires provision of the integrated disclosures for closed-end consumer credit transactions secured by real property, other than reverse mortgages subject to § 1026.33. As discussed in the section-by-section analysis of § 1026.19 above, the Dodd-Frank Act generally directs the Bureau to establish an integrated disclosure for "mortgage loan transactions" that are "subject to both or either provisions of" RESPA sections 4 and 5 and TILA. TILA and RESPA differ in the types of transactions to which their respective disclosure requirements apply. The scope of the integrated disclosure provisions reconciles these differences, recognizing that certain transaction types may be inappropriate for the integrated disclosures.

Notably, the integrated disclosure provisions of the final rule do not apply to reverse mortgages and HELOCs, which are within the statutory scope of TILA and RESPA, because those transactions are fundamentally different from other types of mortgage credit since they do not amortize in the same way as closed-end, forward mortgage loans. The integrated disclosure

[341] The Bureau has chosen, as a matter of discretion, to consider the benefits and costs of those provisions that are required by the Dodd- Frank Act in order to better inform the rulemaking. The Bureau has discretion in future rulemakings to choose the relevant provisions to discuss and to choose the most appropriate baseline for that particular rulemaking.

provisions also do not apply to dwellings that are not secured by real property,[342] which are subject to TILA but not RESPA, or to creditors that originate fewer than five loans in a year, which are subject to RESPA but not TILA. The integrated disclosure provisions do, however, apply to construction-only loans, vacant-land loans, and loans secured by 25 acres or more, although these transactions are currently exempt from RESPA coverage, because the Bureau believes that excluding these transactions would deprive consumers of the benefit of enhanced disclosures.

E. Potential Benefits and Costs to Consumers and Covered Persons

1. Integrated Initial and Closing Disclosures

The final rule requires that the Loan Estimate be provided to consumers no later than three business days after receipt of the consumer's application, to replace the early TILA disclosure and RESPA GFE, and that the Closing Disclosure be received by consumers at least three business days prior to consummation, to replace the final TILA disclosure and RESPA settlement statement. As discussed above, TILA authorizes the Bureau to publish model forms for the TILA disclosures, while RESPA authorizes the Bureau to require the use of standard forms. The final rule requires the use of standard Loan Estimate and Closing Disclosure forms for mortgage loan transactions that are subject to RESPA and TILA. For transactions that are subject only to TILA, however, the forms are not required. Rather, consistent with the provisions of that statute, the forms are model forms. The final rule also incorporates prior informal guidance regarding compliance with HUD's 2008 RESPA Final Rule into Regulation Z

[342] One alternative considered by the Bureau was to include chattel loans, such as those for manufactured housing not inclusive of land, but due to the differences in the informational elements required in chattel lending compared to the informational requirements of lending secured by real property or a dwelling, chattel loans are not covered by the final rule.

and official commentary, as necessary and appropriate.

In considering the benefits and costs of the Loan Estimate and Closing Disclosure, the Bureau notes that most of the costs associated with the final rule will likely be one-time costs associated with adjusting to the new requirements, while the benefits will persist over time. The Bureau believes that because these disclosures may lead to consumers making more informed choices, some of them may obtain mortgages that are lower cost, or in some other way preferable, than the mortgages they would obtain otherwise. Consumers may also decide not to take out a mortgage at all if, given sufficient information, they decide that it is not in their interest.

a. Benefits to Consumers

i. The Loan Estimate. The integration of the early TILA disclosure and the RESPA GFE into the Loan Estimate will have several benefits for consumers. The Kleimann Quantitative Study Report shows that the Loan Estimate will facilitate better consumer understanding of the loan terms and closing costs of possible loans than do the current disclosures. The Loan Estimate will also make it easier for consumers to compare different loans, either different products from a single creditor or loans from different creditors than can be done with the current disclosures. In addition, the harmonization of the Loan Estimate and Closing Disclosure forms will make it easier for consumers to compare the estimated information they initially receive from creditors with the actual costs of the loan than can be done with the current disclosures. The benefits of this third effect are discussed below, in the section on the benefits of the Closing Disclosure.

The Loan Estimate will make it easier for consumers to understand their loan in several ways. First, the Kleimann Quantitative Study Report shows that the Loan Estimate will make it easier for consumers to understand the loan terms and closing costs of potential loans.[343] The Loan Estimate emphasizes information that is important to consumer understanding of the mortgage transaction, and deemphasizes information that is either confusing to consumers or that may not be directly utilized by consumers, such as the APR, which current TILA disclosures focus on as a measure of the cost of credit.[344] Instead, the Bureau's testing indicates that consumers focus on other information that is less prominently disclosed on current Federal disclosures than the APR, or that is not required on current Federal disclosures.[345] *See* Macro 2009 Closed-End Report at iv-v. Accordingly, the Bureau developed the Loan Estimate to prioritize and clearly display the information that consumers readily understand and is most important to them in understanding the loan and the underlying real estate transaction, such as the interest rate, monthly payment amount, and settlement costs. The design displays this key information in a manner that enables consumers to locate it quickly on the form by using highly visible headings and labels and limiting the amount of text on the form. Based on the results of its consumer testing and outreach, described in part III above and in the Kleimann Testing Report as well as the results of the Kleimann Quantitative Study Report, the Bureau believes the

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[343] *See* Kleimann Quantitative Study Report at 68.
[344] As discussed in the section-by-section analyses of § 1026.37(l) and § 1026.38(o)(4), above, research conducted by the Board and HUD, as well as consumer testing conducted by the Board and the Bureau, indicate that consumers do not understand the APR or how to use it when comparing loans and often confuse the APR with the loan's interest rate.
[345]Debra Stark et al., *When is Consumer Understanding Necessary to Make Wise Home Loan Decisions? Testing Enhanced APR Disclosure and General Financial Literacy* (2013), available at http://ssrn.com/abstract=2294590 or http://dx.doi.org/10.2139/ssrn.2294590. The finding presented in Stark et al. (2013) is not to the contrary. The article contends that consumers better utilize the APR when it is more prominently displayed on the first page of the disclosure accompanied by a "lower is better" statement. This is predicated on the assumption that lower APR is always better, which may not hold for all consumers for all loans. Consumers face a tradeoff between interest rate and finance charges, and depending on their circumstances, a higher APR loan may actually give them higher utility. In addition, the findings may not demonstrate that consumers understand and utilize the APR, but may instead demonstrate that consumers can follow the direction on the first page of the study's disclosure that the lower APR number is better.

Loan Estimate is easier for consumers to use and understand than current Federal disclosures.[346]

The Kleimann Quantitative Study Report also shows that the Loan Estimate will make it easier for consumers to understand the risks associated with a loan because the form emphasizes risk factors that are either less prominently disclosed or are not found on current Federal disclosures. For example, the first page of the Loan Estimate clearly discloses whether a loan will or may experience future changes to interest rate, monthly payment amount, or to the loan's principal balance as a result of negative amortization, by using simple text and highly visible capitalized type in a bold font to indicate the possibility of such changes. These disclosures conform to the best practices recommended by experts in the area for presenting numeric health information, which, similar to financial information, requires numeracy skills and risk assessments. In particular, the forms "reduce required inferences and calculations."[347] Furthermore, the disclosure of ranges for variable-rate products further clarifies the variable nature and potential risk of these products. Available evidence indicates that some mortgage borrowers may have difficulty understanding or at least recalling details of their mortgage, particularly the terms and features of adjustable-rate mortgages.[348] These disclosures may help reduce the likelihood that consumers will experience payment shock due to future payment changes. In addition, the Loan Estimate prominently discloses total monthly payment amounts, including estimated amounts for taxes, insurance, and assessments, and whether or not an escrow account would be established for the payment of such amounts. This disclosure will make it

[346] The Kleimann Quantitative Study Report, at page 41, shows that consumers were better informed after utilizing the Loan Estimate form on a variety of topics, including the APR.
[347] Paul Slovic et al., *Numeracy Skill and the Communication, Comprehension and Use of Risk-Benefit Information, in The Feeling of Risk: New Perspectives on Risk Perception 345-352* (Earthscan 2010).
[348] Brian K. Bucks & Karen M. Pence, *Do Borrowers Know their Mortgage Terms?*, J. of Urb. Econ. (2008), available at http://works.bepress.com/karen_pence/5 and James Lacko & Janis Pappalardo, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms* (2007).

easier for consumers to consider the loan and underlying real estate transaction's overall affordability, as compared to current Federal forms.

The integration of the forms may also reduce the number of forms that consumers receive, mitigating "information overload" and making it easier for consumers to identify important information. With the current Federal disclosures, consumers who are shopping between creditors, or comparing loans from one creditor need to work through four separate forms to compare two loan products, which amount to a total of ten pages. But with the Loan Estimate, consumers need to work with only two forms to compare two loan products, and only six total pages. In addition, because the format of the Loan Estimate prioritizes the information that consumers actually use to understand and compare loans, placing it on the first page, consumers could potentially compare two loans using only the first page of the Loan Estimate for each. Since the Bureau's quantitative testing revealed[349] that the Loan Estimate is substantially more understandable for consumers than the current early TILA disclosure and RESPA GFE, the Bureau therefore believes that the new form will enable consumers to make more informed choices when they are considering a mortgage.

The Bureau believes that better understanding of closing costs and loan terms will benefit consumers in several ways. It may help consumers to make better decisions about whether to take out a loan at all, which type of loan to take out, and which creditor to borrow from. Some borrowers, such as those who may benefit slightly from refinancing or for whom whether to rent or buy is a difficult decision, will be close to the margin of taking out a loan or not taking out a loan. Improved understanding of the costs of borrowing will allow those consumers to make a more informed decision about whether to borrow.

[349] *See* Kleimann Quantitative Study Report at 45.

For consumers who are borrowing, a better understanding of closing costs and loan terms will enable them to better pick the loan product that suits their needs and circumstances. It may also enable consumers to identify loans with features that are only suitable for some borrowers, such as negative amortization or balloon payments, and evaluate whether those features make sense for them. The Bureau is concerned that, prior to the mortgage crisis, some borrowers were unable to identify and understand from the Federal disclosures at the time particular loan features that presented significant risks and thus entered into loans with these features without understanding the risks they were taking. This is consistent with the literature.[350]

The Bureau believes that the Loan Estimate may also facilitate consumer shopping for loan offers and creditors, and could potentially affect both the evaluation of different offers and the number of offers consumers obtain. Existing research suggests that consumers do not shop extensively when selecting a mortgage. Surveys of mortgage borrowers suggest that roughly 20 to 30 percent of borrowers contact one creditor and a similar fraction consider only two creditors.[351] Making the terms of a given loan easier to understand will make it easier for consumers to compare loans. As noted above, the Loan Estimate prioritizes on the first page the information that consumers generally use to compare loans (*e.g.*, interest rate, monthly payment, and closing costs). As discussed in part III, above, the Bureau conducted extensive qualitative and quantitative consumer testing of the Loan Estimate to ensure that it enables consumers to understand and compare the terms and costs of various loans. During the testing process, consumers were able to use the form to compare loans and select the loan that best met their

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[350] *See, e.g.,* Benjamin J. Keys et al., *Did Securitization Lead to Lax Screening? Evidence from Subprime Loans,* 125 Q. J. of Econ. 307 (2010) available at doi:10.1162/qjec.2010.125.1.307.

[351] Jinkook Lee & Jeanne M. Hogarth, *Consumer Information Search for Home Mortgages: Who, What, How Much, and What Else?*, 9 Fin. Servs. Rev. 277 (2000), available at http://dx.doi.org/10.1016/S1057-0810(01)00071-3.

preferences (*e.g.*, a fixed rate or lower closing costs). In addition, the final rule requires that all creditors use a standard format for transactions that are subject to RESPA, which the Bureau understands to be the majority of mortgage transactions, ensuring that consumers are presented information about loan terms and costs in the same way across multiple loans and multiple creditors and making comparisons easier. Making it easier for consumers to compare products may have two effects. First, it may make shopping more effective, leading consumers to choose the loan that best meets their needs amongst a given set of loans. Second, it may also lead to more shopping, because the task of comparing loans is simpler.

In addition to providing consumers with clear information about important mortgage terms and closing costs, the Loan Estimate makes clear to consumers which settlement services they can shop for. To the extent that consumers use this information to shop for some settlement services, they may identify service providers that offer better prices or better suit their needs. In a recently released study of title services and title insurance based on RESPA settlement statements for FHA loans, HUD and the Urban Institute estimated that borrowers in some jurisdictions could save several hundred dollars if they searched for and purchased title services and title insurance of their own choosing.[352]

As noted above, the Bureau believes that increased borrower shopping, both in the mortgage and in the settlement services markets, will benefit not only borrowers who shop, but also other borrowers as well. More borrowers engaging in shopping exerts a positive externality on the rest of the borrowers due to creditors and service providers becoming more competitive, leading to lower prices for everyone and a more efficient marketplace.

[352] U.S. Dep't of Hous. & Urban Dev. and The Urban Inst., *What Explains Variation in Title Charges? A Study of Five Large Markets* (2012), available at http://www.huduser.org/portal/publications/hsgfin/title_charges_2012.html (HUD Title Charge Study).

ii. The Closing Disclosure. The Bureau's Quantitative Study shows that the integration of the final TILA disclosure and the RESPA settlement statement will benefit consumers by allowing them to better understand the actual terms and costs of their loan and the other costs of the loan transaction. As with the Loan Estimate, the Bureau developed the integrated Closing Disclosure through several rounds of form design and consumer testing.

The Bureau's Quantitative Study shows that the Closing Disclosure is more understandable for consumers than the current TILA disclosure and RESPA settlement statement.[353] As described below, the final rule includes a requirement that the Closing Disclosure be received by borrowers three business days prior to consummation. The Bureau also believes the Closing Disclosure will improve the ability of consumers to compare the terms and costs on the Loan Estimate with the actual loan terms and closing costs. The Bureau designed the Loan Estimate and Closing Disclosure to work together; the two forms use consistent formatting and language to facilitate consumers' ability to identify any changes that occurred during the underwriting process. For example, the first page of the Loan Estimate, where key loan terms are disclosed to consumers, is nearly identical to the first page of the Closing Disclosure, and the first page of the Closing Disclosure specifically directs consumers to compare the two forms. The second pages of the Loan Estimate and the Closing Disclosure also use the same order and grouping of settlement fees and costs, making it easier for consumers to identify changes. During the Bureau's qualitative consumer testing, consumers were able to use the second pages of the Loan Estimate and the Closing Disclosure together to identify changes in individual costs, often placing the forms side-by-side, which was enabled by the matching order

[353] *See* Kleimann Quantitative Study Report at 41.

and groupings.[354] Results from the Kleimann Quantitative Study Report show that the respondents with the new forms scored significantly higher on various performance measures of the initial and final disclosures.[355] In addition, page three of the Closing Disclosure contains a "Calculating Cash to Close" table that identifies categories of costs that changed from the time the Loan Estimate was provided to the time the Closing Disclosure was provided. The Bureau believes these features will improve consumers' ability to understand their actual loan terms and costs, and compare early and final disclosures and identify changes in loan terms and costs, which may better enable consumers to recognize and question changes in settlement costs or loan terms from the Loan Estimate. This may also encourage creditors to take care to ensure that Loan Estimates are accurate and may discourage unscrupulous creditors from attempting to "bait and switch" consumers with initial Loan Estimates that have better loan terms or lower settlement costs than the final transaction. Further benefits of the Closing Disclosure are discussed in section D.5 below.

b. Magnitude of the Benefits to Consumers of the Revised Disclosures.

Quantifying the magnitude of the benefits of the new Loan Estimate or Closing Disclosure would be very challenging. With regard to the Loan Estimate, important factors in the magnitude of the benefits to consumers would include: 1) how many consumers avoid loans that do not suit their needs; 2) how much more consumers shop; 3) how much more effective that shopping would be; and, 4) how those changes in behavior would translate into changes in the overall market for mortgage loans. The Bureau is unaware of data that would make possible reliable estimates of these effects. As noted, there is some evidence showing that increases in

[354] *See* Kleimann Quantitative Study Report at 47.
[355] *See* Kleimann Quantitative Study Report at 68.

shopping – for example, contacting one more creditor or loan originator – can lead to substantial savings for a consumer.[356] As noted above, the Bureau believes that increased borrower shopping, both in the mortgage and in the settlement services markets, will benefit not only borrowers who shop, but also other borrowers as well. More borrowers engaging in shopping exerts a positive externality on the rest of the borrowers due to creditors and service providers becoming more competitive, leading to lower prices for everyone and a more efficient marketplace.

Similarly, quantifying the magnitude of the benefits of the integrated Closing Disclosure would be very challenging. One of the benefits discussed is that due to the three-business-day provision consumers can now better process the information regarding changes in terms. But, an estimate of how often these changes occur is necessary for the calculation of that benefit. The Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs. While the Bureau did obtain information on RESPA GFEs and RESPA settlement statements from multiple creditors since issuing the proposal, the Bureau believes that this data is not generalizable, as the creditors who shared their data are not active in all segments of the industry. Furthermore, this data only concerns originated loans, so it would not be possible to calculate the rate of attrition between application and settlement even for these creditors. In addition, the data was not comprehensive enough to provide reliable estimates since it did not include other relevant information, such as the prevalence of changes due to changed circumstances, rate locks, and tolerance cures. Other important factors affecting the consumer benefits of the Closing Disclosure include how much it would affect whether consumers

[356] *See* Woodward & Hall.

recognize those changes or how they react to them and the effects on creditors' and settlement service providers' behavior. Again, the Bureau does not have a reliable way to estimate these items.

Despite the challenges to quantifying the benefits of the Loan Estimate and the Closing Disclosure, because the mortgage market is so large, even very small effects on improving consumers' ability to make informed decisions or small effects on prices from greater shopping would lead to large savings for consumers. Illustrations of this dynamic are discussed above in section B. If consumers were to benefit from a reduction in costs, some of the savings would come from reduced profits to creditors and mortgage brokers, as creditors and mortgage brokers may receive lower prices from better-informed borrowers, while other savings would come from a shift of business from less efficient to more efficient creditors and mortgage brokers. The reallocation to more efficient creditors and mortgage brokers that can originate loans at lower cost represents a net savings to society in terms of the total resources used to originate mortgage loans.

c. Costs to Consumers

As noted above, the Bureau does not believe that the integrated Loan Estimate or Closing Disclosure will impose any direct costs on consumers. The Bureau estimates that the final rule will likely reduce the cost per origination. Therefore, the Bureau does not anticipate any material adverse effect on consumers' cost or access to credit in the long or short term.[357] Over the longer term, the final rule could increase credit access if the expected cost savings materialize and the Bureau believes that competition will force creditors to pass on the savings to consumers.

[357] Since the marginal costs are likely to decrease or stay the same, the Bureau believes that the price of credit is similarly going to decrease or stay the same. Using the same rationale, the Bureau believes that there will be no adverse effect on consumers' access to credit.

d. Benefits to Covered Persons

The integration of the early TILA disclosure and the RESPA GFE, and the revised TILA disclosure and the RESPA settlement statement may benefit creditors, mortgage brokers, and settlement agents that provide the disclosures. It will reduce the number of pages of forms related to the disclosures that covered persons need to prepare and provide for each application and the number of disclosure-provision systems and processes that covered persons need to maintain. In addition, the three-page Loan Estimate replaces a three-page GFE, a two-page early TILA disclosure, a one page appraisal notification provided under ECOA section 701(e), a one-page servicing disclosure provided under RESPA section 6, and addresses other new disclosure requirements in the Dodd-Frank Act. However, this effect may be mitigated by consumers shopping more and therefore requesting more forms overall from different creditors.

Most small entities that participated in the Small Business Review Panel process stated that the integrated forms would make it easier to explain transactions to consumers. One letter from several small entity settlement agents indicated that the new forms could actually lead to more questions during a closing. However, that comment may have been driven in part by the possibility that the Bureau would require certain disclosures, such as the approximate cost of funds, which may be difficult to explain to consumers. Based on its consumer testing and public comments indicating that the approximate cost of funds disclosure would be confusing to consumers and not aid consumer understanding, the Bureau determined to exempt creditors from providing such disclosure. However, the Bureau determined to require the total interest percentage disclosure on the integrated disclosures based on its consumer testing results. Information submitted by several settlement agents indicates that requiring the use of standard forms and clearer regulatory guidance could save as much as 30 minutes per closing by reducing borrowers' confusion, both by of synchronizing the Loan Estimate and the Closing Disclosure, and by standardizing forms across creditors. The final rule requires that for loans subject to RESPA, which are the majority of transactions subject to the final rule, the integrated disclosures are a standard form. Based on industry estimates, the typical hourly wage of a settlement agent is $34 per hour,[358] which translates into a dollar savings from the simplified closing forms of $17 per closing. Based on the 2011 numbers, this would result in saving of $130,000,000 per year. The Bureau believes that most of these savings are likely to be passed on to consumers since these are marginal savings per consumer and most firms operate in a competitive environment.

e. Costs to Covered Persons

As described above, the Bureau believes that the ongoing costs of compliance with the final rule and disclosure requirements it is adopting will likely be equal to or less than current ongoing compliance costs. The integrated Loan Estimate and Closing Disclosure will result in certain one-time costs to revise software and compliance systems. The Bureau believes that many of the costs of complying with these requirements would be common across the two disclosures, and therefore discussed them together here. Under the proposal, responsibility for delivering the Loan Estimate would have rested solely with the creditor. After analysis and consideration of public comments, the Bureau has decided that under the final rule the creditor will be responsible for the delivery of the Loan Estimate, but either the creditor or a mortgage broker may provide the disclosure if the mortgage broker receives the consumer's application. Creditors and mortgage brokers will need to adapt their software and compliance systems to

[358] Based on 2011Q4 weekly wages in the title abstract and settlement industry from the Bureau of Labor Statistics series ENUUS000405541191, assuming 40 hours worked per week and that 66.6 percent of compensation is wage compensation.

produce the new forms.[359] In the proposal, the Bureau proposed two alternatives for provision of the Closing Disclosure. Under the first alternative, the creditor would have been solely responsible for providing the Closing Disclosure to the consumer. Under the second alternative, the creditor and the settlement agent would have been jointly responsible. For purposes of the proposed 1022 analysis, the Bureau assumed that creditors would bear the costs of implementing the requirements relating to the Closing Disclosure, but expected that, to the extent settlement agents would be involved in providing the disclosure, their costs would be similar. The Bureau also expressly requested comment on this approach to estimating costs to covered persons. After analysis and consideration of public comments received, the Bureau has decided that under the final rule the creditor will be responsible for the delivery of the Closing Disclosure, but either the creditor or a settlement agent may provide the disclosure, provided that one of them does so. Accordingly, in this final 1022 analysis, the Bureau provides estimated costs to settlement agents as well as to creditors.

In the proposed 1022 analysis, the Bureau focused on the costs to creditors of updating and revising their software and compliance systems. The Bureau recognized, however, that such systems updating is a complex process that includes costs such as learning about the requirements of the rule, and training employees.[360] In response to the Bureau's requests for comment on this aspect of the proposed 1022 analysis, the Bureau received comments stating

[359] The Bureau calculates the impact of the rule on creditors and mortgage brokers combined and uses the term "creditor" to denote both creditors and mortgage brokers below. The Bureau's method of estimation of the number of loan officers is based on the number of mortgage applications and therefore accounts for mortgage brokers as well. Therefore, any cost estimate based on the number of loan officers accounts for the costs associated with mortgage brokers as well. In terms of costs calculated on a per entity basis, the Bureau believes that creditors could outsource disclosure form provision to mortgage brokers if it were more efficient. Thus the estimates presented below are overestimates - some of creditors might incur less cost while implementing the rule provisions by outsourcing to mortgage brokers

[360] 77 FR 51116, 51272, 51280 (Aug. 23, 2012).

that certain of its cost estimates were too low, as well as comments suggesting that the Bureau had failed to consider certain aspects of such systems updating costs. For example, a trade association representing the escrow industry asserted that rollout and training would take three months, and a bank suggested that the Bureau's estimate of employee training costs should not be limited to the cost of training loan officers, but should also include the cost of training back-office staff. As indicated below, the Bureau has revised its cost estimates in response to these and similar comments.

Based on industry feedback, the Bureau believes that 95 percent of originators rely on vendors. The use of loan origination software vendors by creditors will substantially mitigate the costs of revising software and compliance systems, as the efforts of a single vendor would address the needs of a large number of creditors.[361]

Based on estimates from small entities that participated in the Small Business Review Panel process, the Bureau estimates that the small fraction of creditors that maintain their own compliance software and systems each will incur costs of roughly $100,000 to update their systems to comply with the final rule. Firms are expected to amortize this cost over a period of years. In this analysis the Bureau amortizes all costs over five years, using a simple straight-line amortization. Thus, about five percent of creditors are expected to incur a cost of $20,000 per year for five years. The Bureau estimates that there were a total of 14,194 banks, savings institutions, credit unions, and mortgage companies that originated mortgages in 2011, the most

[361] Based on discussions with a leading compliance firm, the Bureau believes that these updates, however, will likely be included in regular annual updates, and therefore the costs will not be directly passed on to the client creditors. As many as 95 percent of creditors, therefore, may not pay directly for software updates to comply with the new rules.

recent year for which complete data are available.[362] The total one-time cost for the roughly five percent of creditors that maintain their own compliance software and systems (fewer than 1,000 of the over 14,000 creditors) is therefore $71,000,000 (rounded to the nearest $100,000). Amortized over five years, the estimated total annual cost for all such creditors to update their compliance systems is $14,200,000.

A commenter (an industry trade association representing escrow agents) specifically suggested that three months would be required for a software vendor member of the association to perform customer rollout and customer training once the vendor actually updates the software. Relying, in part, on this information, the Bureau assumes that each creditor will have an implementation team spend approximately three months of full-time equivalent work[363] on various processes necessary for implementation and rollout. For smaller creditors (small businesses according to the SBA thresholds of $500,000,000 asset size DI and $35,000,000 revenue for non-DIs), this team will consist of a compliance officer, [364] who will spend 50% of his or her time working on the implementation team, and an information technology specialist, who will also spend 50% of his or her time working on the implementation team. For a larger creditor (not a small business according to SBA), the Bureau assumes that the implementation team will consist of 8 employees, also working for three months full time, 4 compliance officers

[362] Creditors and originator estimates based on analysis of HMDA, SNL Call Reports, NCUA Call Reports, and NMLS Call Reports. See part VIII below for additional details.

[363] For the purposes of this analysis, the Bureau uses full-time equivalency to simplify the presentation of calculations. Three months of full-time equivalency might be, for example, six months of 50% involvement or one month of full-time work, followed by five months of delay, followed by two more months of full-time work for some creditors

[364] Here and below, depending on the institution, many of the tasks described, including the operational challenges of ensuring that the updated software works properly, could be performed by a loan officer, a compliance officer, or back office support staff. The Bureau believes that the choices made here and below best describe a median mortgage originator – an institution that has under $200,000,000 dollars in assets. However, the cost estimates would not change materially if other assumptions were used.

and 4 information technology specialists. These processes include reading the rule in detail, gap analysis, testing and troubleshooting software systems involved in origination, and making any necessary changes to policies and procedures. Implementation is expected to require a complete rewrite, from the ground up, of both the early disclosure and the late disclosures in the mortgage loan process, supplemented by a revamp of data standards underlying the data on these disclosures; major, foundational changes to technology systems; and intense coordination among many parties around new process flows and roles and responsibilities.[365] The total one-time cost is therefore $873,200,000 (rounded to the nearest $100,000). Amortized over five years, the estimated total annual cost for all such creditors to update their compliance systems is $174,600,000.

Covered persons will also incur one-time costs associated with training employees to use new forms and any new compliance software and systems. Several commenters suggested that the training time of a loan officer was understated in the 1022 analysis contained in the proposed rule. In line with the comments, the Bureau has adjusted the training time of a loan officer from two to eight hours, and has added 0.67 hours of back-office staff training per loan officer hour of training to its estimate. Specifically, the Bureau estimates that one trainer could train ten loan officers at a time, for an additional one hour of trainer time per ten hours of trainee time.[366] The Bureau estimates that there are 79,861 loan officers and other employees that will need training. Based on data from the Bureau of Labor Statistics, the Bureau estimates that the average total

[365] The Bureau believes that coordination is going to be a one-time cost accompanied by no incremental ongoing costs. Creditors and settlement agents already have to communicate on a host of issues. Thus, both parties need to change the procedures associated with their already existing coordination. However, once these procedures are changed, the Bureau believes that the ongoing costs will be the same as now, and has not received any evidence to suggest otherwise. Even if there actually will be any ongoing costs, the Bureau believes that they will be minimal.

[366] Additional back office staff may receive training to comply with the new rules. The Bureau believes that these costs are likely to be *de minimis*.

compensation of a loan officer is $48 per hour and the average total compensation of a back office support staff is $26 per hour, for a total training cost of $35,000,000. Amortized over five years, this leads to an annual cost of $7,000,000 for all mortgage creditors combined. The Bureau does not believe that there will be any ongoing training burden, over and above the already existing annual training that the loan officers are likely to receive.

Several commenters stated to the Bureau that the development of training materials might impose a cost as well.[367] The Bureau agrees. The Bureau assumes that in each institution two compliance officers will spend 30 hours each developing training materials – including reading the rule, either developing a training course or arranging for procurement of a training course, and attending relevant conferences and webinars. This results in an additional cost of $40,000,000. Amortized over five years, this leads to an annual cost of $8,000,000. Some institutions might find it less expensive to outsource this activity, thus the estimate above is likely an over-estimate.

Unless creditors choose not to divide responsibilities with settlement agents and provide the Closing Disclosure themselves, creditors need to ensure better coordination with settlement agents.[368] Such enhanced coordination is needed both to ensure that creditors comply with the rule, under which creditors are responsible for provision of the Closing Disclosure regardless of the degree of settlement agent involvement, and to ensure fewer unanticipated closing delays caused by failures to provide the Closing Disclosure in a timely manner. Several commenters stated that these costs would be substantial including individual commenters and an industry trade association. The Bureau estimates that creditors outside of the top 20 will, on average,

[367] Commenters included an industry trade association representing banks and a title insurance company.
[368] These costs could have been counted instead in the Provision of Final Loan Disclosure section below.

have an attorney or a manager spend eight hours each of full-time equivalent work rearranging division of responsibility with settlement agents, and ensuring that the proper processes are in place. This results in a cost of $13,100,000 or, amortizing over five years, $2,600,000 per year. Of course larger creditors have to coordinate with a large number of settlement agents, and this requires more time and resources. The Bureau estimates that creditors in the top 20 will, on average, have fifty attorneys or managers spend one day full-time rearranging division of responsibility with settlement agents, and ensuring that the proper processes are in place. This results in a cost of $928,600 or, amortizing over five years, $186,000. Although the top 20 have to coordinate with a larger number of SAs than the smaller entities, we expect that there are economies of scale.

Taken together, the Bureau estimates that the total one-time costs of complying with the Loan Estimate and Closing Disclosure requirements for all mortgage creditors will be approximately $1,033,000,000. Amortized over five years, this is an annual cost of $206,700,000 for all mortgage creditors combined. For additional perspective, there were nearly 8,000,000 mortgage originations in 2011. The estimated one-time cost, annualized using a five-year amortization, is therefore less than $27 per origination. Note that these costs will not recur, and the Bureau expects that ongoing costs will be equal to or less than current compliance costs.

The final rule also requires itemization of certain settlement charges that are not permitted to be itemized on the current RESPA GFE and RESPA settlement statement forms, which may lead to increased costs for covered persons. In HUD’s 2008 RESPA Final Rule, HUD predicted that removing itemization from the disclosures would relieve creditors from preparing lengthy lists of fees and addressing consumer questions about such fees. 73 FR 68204, 68276. However, the Bureau understands that creditors and settlement agents often provide this itemization on separate disclosures to provide additional information to consumers regarding such costs, or to comply with State law or investor requirements, which mitigates any increased costs associated with itemization.[369] Accordingly, this final rule, by including such itemization on the Loan Estimate and Closing Disclosure, may obviate the need to produce separate paperwork that creditors and settlement agents complete in some cases in connection with transactions.

As noted above, in the proposal, the Bureau stated its belief that settlement agent costs in connection with providing the Closing Disclosure would be similar to costs imposed on creditors by the Closing Disclosure requirement. The Bureau received a number of comments essentially agreeing with this view.

The Bureau estimates that each settlement agent[370] will need about 20 hours of one-time training. The ongoing periodic training time should be similar to the time that it takes currently, if not lower. This results in a cost of $45,700,000[371], or $9,100,000 per year amortized over five years.

Similarly to creditors, settlement agents will incur costs flowing from the need to enhance coordination with creditors. The Bureau estimates that for each firm providing closing services, one settlement agent will spend two full-time weeks ensuring proper coordination with creditors. This results in a cost of $2,800,000,[372] or $600,000 per year amortized over five years.

Again, similarly to creditors, each firm conducting closings needs to update its software.

[369] The Bureau acknowledges that there are differences in cost between voluntary and mandatory provision of information. To the extent that the practices need to be changed to adhere to the standards laid out in this rule, the loan originator (and/or settlement agents) will incur a one-time cost. However, the Bureau believes that it would be a relatively small software redesign cost at most.

[370] For the purposes of this 1022 analysis, the term "settlement agent" includes anyone who conducts the settlement.

[371] According to Bureau of Labor Statistics series EC075SSSZ4, there were 77,310 settlement agents in 2007.

[372] According to Bureau of Labor Statistics series EC075SSSZ4, there were 10,168 title abstract and settlement offices in the US in 2007.

While the Bureau expects that the software development costs will fall on the software vendors, the Bureau believes that there will be implementation costs that will fall on the firms conducting settlements, similar to the ones described above in the discussion of creditor costs. In particular, the Bureau assumes that one settlement agent and one information technology specialist, both working 50% of the time on the implementation process, will spend three months each reading the rule, performing gap analysis, integrating new software, and ensuring its proper operation. This results in a cost of $248,900,000, or $49,800,000 per year amortized over five years. Finally, each firm will need to develop or procure training materials. The Bureau estimates that developing training materials will take three full-time work weeks of a settlement agent. This results in a cost of $41,500,000, or $8,300,000 per year amortized over five years. If the development of training materials requires more time and expense than this, the Bureau expects firms to procure training materials at the same or lesser cost.

2. Definition of Loan Application

The final rule revises the regulatory definition of loan “application” to provide clarity to consumers regarding when a Loan Estimate must be provided by a creditor or mortgage broker. Under TILA and RESPA, a creditor or mortgage broker is not required to provide the good faith estimates of loan terms and settlement costs in the early TILA disclosure and RESPA GFE until it has received an “application.” As discussed more fully in the section-by-section analysis of § 1026.2(a)(3), under current regulations, the receipt of the following information by the creditor or mortgage broker constitutes receipt of an “application”: (1) borrower’s name; (2) borrower’s monthly income; (3) borrower’s social security number to obtain a credit report; (4) the property address; (5) an estimate of the value of the property; (6) mortgage loan amount sought; and (7) any other information deemed necessary by the creditor. The seventh item could allow creditors and mortgage brokers to delay providing the integrated Loan Estimate until after collection of the six specific items, to collect any information they deem "necessary." The final rule removes the seventh item ("any other information deemed necessary by the creditor") from the definition of "application."

a. Benefits to Consumers

By establishing a bright line standard governing when the Loan Estimate must be provided, the final rule will enable consumers to understand the application stage of their mortgage loan transactions, specifically, when they can obtain the Loan Estimate that contains reliable estimates that are subject to the good faith estimate and tolerance requirements of § 1026.19(e). This bright line standard will better enable consumers to plan their shopping for mortgage loans, since it clearly delineates the date by which a consumer will receive a Loan Estimate and thus will have all of the information necessary for shopping. In addition, this bright line standard will make compliance more straightforward for industry and supervisory agencies that examine for compliance with the integrated disclosure requirements.

The Bureau believes that the final rule may benefit consumers by causing creditors to provide consumers Loan Estimates marginally earlier in the lending process than under the current definition, which will give consumers a longer period during which they can rely on the Loan Estimates in shopping for their loan. Removing the seventh item may allow consumers, at an early stage of the process, to receive earlier Loan Estimates that are subject to the limitations on increases imposed by § 1026.19(e)(3), whereas today, at an early stage of the process, consumers may receive only informal estimates that are not subject to those protections. Improved consumer shopping for mortgages may result in lower costs to consumers. Given a uniform set of disclosures with synchronized timing, consumers who shop are likely to have more complete and more easily comparable information than they would with heterogeneous informal estimates. As described above, the Bureau cannot estimate the magnitude of the benefits of improved shopping, but even relatively small improvements could have large dollar impacts due to the size of the market.

As noted above, the Bureau believes that increased borrower shopping, both in the mortgage and in the settlement services markets, will benefit not only borrowers who shop, but also the other borrowers as well. More borrowers engaging in shopping exerts a positive externality on the rest of the borrowers due to creditors and service providers becoming more competitive, leading to lower prices for everyone and a more efficient marketplace.

The Bureau also believes that the Loan Estimate is a better shopping tool for consumers than informal estimates provided to consumers prior to receipt of the consumers' application,[373] because the Loan Estimate was developed through an extensive consumer testing and design process and will present information regarding loans provided by different creditors in a standardized format (unlike informal estimates) and because certain costs disclosed in the Loan Estimate are subject to limitations on increases, as described below. The Bureau believes that creditors will be able to provide reliable estimates based on the six items that together constitute an application under the final rule and that, by receiving cost estimates earlier in the mortgage lending process, consumers will have the opportunity to compare several different offers at the same time or more time to shop for a better deal.

The Bureau understands that industry may in response to the final rule sequence their application processes to receive additional information they deem necessary prior to receipt of

[373] While the Bureau does not possess any evidence that the creditors are currently strategically delaying disclosures due to the seventh element, taking this requirement out of the definition of application ensures that this does not happen, which the Bureau believes will make delivery times more uniform.

the six items. However, even if the impact of deleting the seventh item from the definition of "application" does not move the delivery of the Loan Estimate to consumers significantly earlier in the origination process, the Bureau believes other significant benefits will accrue to consumers from this definition of "application." The Bureau believes that providing a bright line standard for the definition of application, such that consumers will know the point in time when they are to receive the Loan Estimate, will aid consumers' understanding of the application stage of their mortgage loan transactions. Consumers will be able to understand when they are entitled under this regulation to obtain the Loan Estimate that contains reliable estimates that are subject to the good faith estimate and tolerance requirements of § 1026.19(e), which the Bureau believes will better enable consumers to shop effectively for mortgage loans.

b. Costs to Consumers

The Bureau does not believe that eliminating the seventh item in the definition of application will lead to costs to consumers. As noted above, the Bureau believes that no costs will be passed through to consumers by creditors or loan originators.

c. Costs to Covered Persons

The Bureau understands that eliminating creditors' and mortgage brokers' ability to wait to provide a good faith estimate until after they receive "any other information deemed necessary" could increase the burden on creditors and mortgage brokers to the extent that it causes them to issue more Loan Estimates than they would under the current definition of application. If a creditor or mortgage broker obtains additional information from the borrower after the Loan Estimate has been issued that affects the costs of the settlement service for the loan, the creditor or broker may need to issue a revised Loan Estimate. The Bureau is unaware of information that would allow it to estimate how often this would occur. The Bureau believes, however, if this were to impose substantial costs, creditors and mortgage brokers would mitigate this by adjusting their business practices surrounding the receipt of applications to gather other important information prior to, or at the same time as, they obtain the six items that together constitute an "application." In this regard, the Bureau notes that, under the final rule, a creditor may request such other information prior to obtaining all six items that constitute an application without triggering the disclosure requirement. To the extent that creditors delay obtaining all six items, it would mitigate the benefit to consumers of receiving the form earlier. However, as described above, there are other benefits that will accrue to consumers from providing a bright line standard for the definition of application.

In developing the final rule, the Bureau also considered removing additional items from the regulatory definition of "application." However, the Bureau does not believe the other items in the current definition of application raise similar concerns regarding creditors' ability to delay provision of the early disclosures. Furthermore, the Bureau believes that many or all of the six items may be necessary for a creditor to provide reliable estimates in many circumstances.

3. Permissible Changes in Settlement Costs/Redisclosures

The final rule revises current rules regarding the circumstances in which a consumer may be charged more at closing for settlement services than the creditor estimated in the disclosure provided to the consumer within three business days of receiving the application.

As discussed more fully in the section-by-section analysis of § 1026.19(e)(3), HUD's 2008 RESPA Final Rule limits the circumstances in which a creditor can charge the consumer more at consummation for settlement services than the creditor estimated in the RESPA GFE provided to the consumer within three business days of receiving the application. These rules generally place charges into three categories: the creditor's charges for its own services, which cannot exceed the creditor's estimates unless an exception applies ("zero tolerance"); charges for settlement services provided by third parties, which cannot exceed estimated amounts by more than ten percent unless an exception applies ("ten percent tolerance"); and other charges that are not subject to any limitation on increases ("no tolerance limit"). HUD's 2008 RESPA Final Rule permits certain limited exceptions in which higher charges are permitted, such as when the borrower requests a change, when the RESPA GFE expires, or when valid changes in circumstance occur. The Bureau is aware of concerns that HUD's 2008 RESPA Final Rule is both too lax and too restrictive, and also that the rule is difficult to understand. The final rule attempts to address these concerns by balancing the objective of improving the reliability of the estimates creditors give consumers shortly after application with the objective of preserving creditors' flexibility to respond to unanticipated changes that occur during the loan process. Specifically, the final rule applies the zero tolerance category to a larger range of charges, expanding it to include fees charged by an affiliate of the creditor and fees charged by service providers selected by the creditor and fees for services for which the consumer is not permitted to shop. A service provider is considered required by the creditor if consumers are required to use only that provider or to choose only from a list of service providers prepared by the creditor (*i.e.*, if consumers are not permitted to shop for their own provider off of the list).

Some alternatives the Bureau considered in developing the final rule included narrowing the exceptions permitting increases in settlement charges in order to restrict the ability of a creditor to charge more for its own services or for third-party settlement services than the creditor initially estimated. However, the Bureau was concerned that this approach could prevent creditors from increasing settlement charges to reflect justifiable increases in costs. The Bureau also considered preserving HUD's 2008 RESPA Final Rule in its entirety. However, as discussed above, the Bureau believes that the final rule is an improvement over HUD's 2008 RESPA Final Rule because it requires creditors to provide consumers with more accurate estimates of settlement charges. In addition, the final rule includes more guidance than the current rule regarding the circumstances in which creditors may revise cost estimates.

a. Benefits to Consumers

The Bureau believes that consumers may benefit when fewer charges are permitted to change from the Loan Estimate. Consumers that rely on the Loan Estimate to shop for a loan will be able to make decisions based on estimated costs that more closely reflect the actual costs they would bear, making shopping more effective. For some consumers, such as those considering a refinancing that they may or may not decide to take out, more reliable information may allow them to make a better-informed decision about whether to take out a loan at all. Firmer fees may also reduce "gaming" by unscrupulous creditors that intentionally underestimate on initial forms and then impose new or different charges near the time of consummation. Reducing uncertainty may also benefit consumers by relieving their need to plan for contingencies or other consequences that flow from the uncertainty.

The Bureau cannot quantify the magnitude of these benefits. As discussed above, the Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs or of the causes for those changes that occur.

Expanding the set of costs included in the zero tolerance category may also benefit consumers by giving creditors an incentive to control the costs imposed by third parties. Currently, creditors have limited incentives to control third-party costs. By applying the zero tolerance category to a larger range of charges, including charges by affiliates of the creditor and some services for which the consumers is not permitted to shop, the final rule will cause creditors to absorb more increases in costs, and may incent them to seek to minimize the chance that these increases will occur. Creditors are in a better position than consumers to control these costs, as they are much more familiar with these markets than are typical consumers, and they are likely to have ongoing relationships with affiliates and settlement service providers for services that consumers are not permitted to shop that gives them some ability to encourage these providers not to charge more than the initial estimate.

b. Costs to Consumers

The expansion of the set of costs that are subject to a zero tolerance may impose costs on some consumers. The restriction on changes to these costs may cause some creditors to provide higher initial estimates, making shopping less effective as borrowers rely on less accurate information. The Bureau believes, however, that these effects are likely to be mitigated by competitive pressures that encourage creditors not to inflate cost estimates. In addition, the final rule requires creditors to make good faith estimates, and thus, creditors may be concerned about liability under the rule from providing inflated estimates.

c. Benefits to Covered Persons

Covered persons may also benefit from the final rule because it reduces ongoing compliance burden by resolving prior regulatory ambiguities about how to comply with TILA and RESPA. For example, the final rule provides additional guidance on the current rule regarding the circumstances in which creditors may revise costs estimates and the use of average cost pricing. The final rule further streamlines and clarifies HUD's 2008 RESPA Final Rule by incorporating prior HUD guidance into Regulation Z and its commentary, as necessary and appropriate. The Bureau is unaware of reliable data showing how often creditors will provide additional disclosures once the final rule becomes effective. Some creditors, however, have reported that additional clarity regarding redisclosure requirements for the RESPA GFE and average cost pricing would reduce the cost of compliance, in part, by reducing confusion over when redisclosure is permitted or required, and thereby reducing the need for legal advice.

To the extent that the final rule's restriction on certain changes in fees reduces bait-and-switch tactics by some creditors, this may benefit honest creditors that do not use these tactics.

d. Costs to Covered Persons

The Bureau understands that covered persons may experience increased costs as a result of the final rule, which applies the zero tolerance category to a larger range of charges. Since the final rule expands the circumstances in which creditors cannot pass increased costs to consumers when the initial estimate is lower than the actual costs, creditors may be required to absorb more costs when no exception, such as a legitimate change in circumstances, is present. This impact should be mitigated to the extent creditors are in a position to know the typical charges of affiliated firms and firms they engage repeatedly and require consumers to use, and can therefore provide estimates that are accurate. As discussed above, the Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs, and the causes of those changes. Therefore, the Bureau cannot provide estimates of how often creditors would have to absorb higher than expected costs that cannot be attributed to a changed circumstance. The discussion of average cost pricing provided in the "Consumer Benefits" section above applies here, as well, suggesting that these costs to creditors would be quite modest. Creditors may also encounter increased costs in circumstances where costs in the newly defined zero-tolerance categories increase in ways permitted by an exception. The incidence of these scenarios is not known, but the Bureau believes that the resultant costs will be negligible.

The Bureau also anticipates that the final rule may result in increased use of affiliated service providers, including settlement agents or other providers of settlement services, so that creditors can more directly control changes in settlement costs, which could have a negative impact on independent providers. Alternatively, the final rule may encourage creditors to allow borrowers to choose settlement service providers that are not on a list provided to the borrower so that the zero percent tolerance requirement would not apply. In addition, the Bureau's 2013 ATR Final Rule may mitigate the incentives to utilize affiliates.

Arguably, it is easier for a creditor to ensure that costs do not change if the settlement agent is an affiliate. Some commenters have argued that the negative impact on independent providers could lead to reduced competition for settlement services and ultimately higher costs for consumers. The Bureau is unaware of any evidence that such increase in costs will occur even if creditors were to increase their use of affiliates. On the contrary, economic theory implies that prices to consumers might decrease due to an increased utilization of affiliates.[374] However, there have also been concerns about the use of affiliates in the real estate market, and whether they are in the best interest of consumers. *See* GAO Report Title Insurance, Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers, at p. 33. The Bureau acknowledges that creditors may choose not to use affiliates for various reasons, including that affiliate fees are included in "points and fees" for purposes of the Bureau's ability to repay rules and for coverage under the Home Ownership and Equity Protection Act."

Alternatively, the final rule may encourage creditors to allow borrowers to choose settlement service providers that are not on a list provided to the borrower so that the zero

[374] See, for example, Cournot (1838) and Spengler (1950).

tolerance requirement would not apply.[375] This would appear to benefit independent service providers, or at least be neutral relative to current practices. For a broader discussion of costs related to the zero-tolerance category, please refer to the section-by-section analysis of §1026.19(e).

Settlement agents may also be affected. As mentioned above, the final rule may result in increased use of affiliate service providers. Thus, it is conceivable that creditors will choose to perform settlement services internally and that more creditors will enter into more formal outsourcing/affiliate arrangements with settlement agents, which may result in a revenue decrease for independent settlement agents. These effects are likely to be mitigated by the points and fees thresholds for qualified mortgages in the 2013 ATR Final rule, which lessen the incentive to use affiliated service providers. The Bureau cannot estimate the magnitude of this revenue decrease and the proportion of firms providing settlement agent services that will experience this revenue decrease.

4. Provision of the Closing Disclosure

The final rule requires delivery of the integrated Closing Disclosure so that it is received by the consumer three business days before consummation in all cases. The final rule makes the creditor ultimately responsible for providing the Closing Disclosure, but permits creditors to use settlement agents to provide the Closing Disclosure, provided that settlement agents comply with all relevant requirements concerning the Closing Disclosure. The following discussion is limited to the most significant elements of the Closing Disclosure requirements. See the section-by-section analyses of §§ 1026.19(f) and 1026.38 for discussion of the other elements.

[375] The final rule requires a statement on the list that the consumer can select a provider not on the list, as illustrated by form H-27 of appendix H to Regulation Z.

a. Timing of Closing Disclosure Provision

TILA and RESPA establish different timing requirements for disclosing final loan terms and costs to consumers. As discussed more fully in the section-by-section analyses of§ 1026.19(f)(1)(i) and (f)(1)(ii)(A), TILA, as implemented by Regulation Z, generally provides that, if the early TILA disclosures contain an APR that becomes inaccurate, the creditor shall furnish corrected TILA disclosures so that they are received by the consumer not later than three business days before consummation. On the other hand, RESPA and Regulation X generally require that the RESPA settlement statement be provided to the borrower at or before settlement.[376] To meet the Dodd-Frank Act's mandate to integrate the disclosures required by TILA and RESPA, and to better facilitate consumer understanding of the costs, the final rule requires delivery of the integrated Closing Disclosure so that it is received by the consumer three business days before consummation. Because the Closing Disclosure may change before consummation without triggering a new three-business-day waiting period, except in the three circumstances discussed above, the Bureau believes it is appropriate to implement RESPA section 4, which gives borrowers the right to inspect the settlement statement one business day before settlement, by giving consumers the right to inspect the Closing Disclosure one day before consummation. The Bureau believes that implementing this statutory right will reduce the likelihood that consumers will be surprised by changes to the Closing Disclosure at the point of consummation. Moreover, the Bureau believes a one-day right to inspect will be less disruptive to the efficient operation of closings than a three-business-day redisclosure requirement.

To prevent unnecessary closing delays, the final rule clarifies that, consistent with other

[376] RESPA also provides for one day advance disclosure upon borrower request but settlement agents only need to provide information known to them at time of the disclosure. 12 U.S.C. 2603(b).

Regulation Z disclosure requirements under § 1026.17, where the creditor does not have the actual terms, the creditor may provide an estimate based on the best information reasonably available to the creditor on the originally provided Closing Disclosure. In addition, the final rule also permits a number of changes after provision of the Closing Disclosure to reflect common adjustments without causing closing delays while protecting consumers from major changes that could present significant, long-term financial risk. If, between the time the Closing Disclosure is first provided and consummation, the loan's APR becomes inaccurate (over and above the specified tolerance level), the loan product changes, or a prepayment penalty is added, a revised Closing Disclosure must be issued with an additional three-business-day period to review the transaction. All other changes to the Closing Disclosure may be made without an additional three-business-day waiting period, but a revised Closing Disclosure must be provided at or before consummation.

i. Benefits to Consumers. Consumers may benefit from the final rule because it will ensure that consumers receive the disclosures far enough in advance of consummation so that they can review the final details of the transaction. Together with the improved clarity of the Closing Disclosure and the comparability of the Loan Estimate and the Closing Disclosure, this should allow consumers to have a better understanding of the final terms of the transaction and whether and how those terms have changed since the consumer received the Loan Estimate. Indeed, respondents in the Bureau's Quantitative Study that used the integrated disclosures performed statistically significantly better than respondents using the current disclosures at answering questions comparing their estimated and final loan terms and costs, as well as at answering questions about their final loan terms and costs.[377] The mandatory three-business-day waiting period may encourage all creditors to take greater care to ensure that Loan Estimates are accurate and may discourage unscrupulous creditors from attempting to "bait and switch" consumers with an initial Loan Estimate that has better loan terms or lower settlement costs than the final transaction because consumers will have additional time to review the terms of their transaction.

The Bureau cannot quantify the magnitude of the benefits of the three-business-day period for consumers to review the integrated Closing Disclosure. As discussed above, the Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs.

ii. Costs to Consumers. If the final rule's requirement for creditors (or settlement agents, to the extent creditors divide responsibility with them) to provide the Closing Disclosure so that it is received by the consumer three business days prior to consummation in all circumstances were to result in closing delays, such delays could come at a cost to consumers. For example, for a consumer who is buying and selling a primary residence, a delay in the sales transaction may result in a delay in his or her purchase transaction as well, and thus might be a significant cost if it were out of the consumer's control. However, the Bureau believes the incidence of such delays would be extremely rare for a number of reasons.

First, the final rule allows the consumer to waive the waiting period for bona fide personal financial emergencies -- consumers currently have this waiver ability under Regulation Z with respect to certain TILA disclosures. Second, both settlement agents and creditors have

[377] *See* Kleimann Quantitative Study Report at 46-48.

incentives to complete closings as scheduled, and therefore the Bureau believes that they will adjust their business practices such that the Closing Disclosure can be provided in a timely manner and closing delays will be infrequent. Third, as described above the final rule permits creditors to provide estimates where actual terms are not available, and where changes happen subsequent to the issuance of the Closing Disclosure only require a further three-day waiting period if there are certain significant changes to the terms, such as a change in the APR by more than 1/8 of 1 percent or 1/4 of 1 percent (based on the type of loan), the loan product changes, or there is an addition of a prepayment penalty. Accordingly, the Bureau believes the rule as finalized is unlikely to lead to frequent closing delays.

Many commenters suggested that consumers will be hurt by the closing delays arising from creditors not being able to provide the final Closing Disclosure in a timely fashion. The Bureau disagrees. Due to competition, creditors are unlikely to continue current processes as that would result in many transactions being delayed due to the three-business-day provision. Thus, creditors are likely to implement necessary process adjustments to avoid consummation delay. Since these processes involve fixed costs, consumers are unlikely to experience any price increases.[378] Moreover, the final rule's requirements for the three business day waiting period are less strict than those proposed, which should further alleviate any concerns about this issue.

iii. Costs to Covered Persons. If the requirement does lead to delayed or canceled closings, this may impose costs on covered persons as well. Such closing delays could result in loss of revenue for transactions that fall through due to a delay. However, as noted above, in response to public comments received, the Bureau has revised the final rule regarding redisclosure of the Closing Disclosure and additional three-business-day waiting periods to mitigate the risk of frequent closing delays. The final rule may also create legal and reputational risks for creditors or settlement agents that are unable to close loans as planned. Accordingly, the Bureau does not believe there is a high risk of closing delays from the final rule.

iv. Alternatives Considered. Under the proposal, most changes to the actual terms of the transaction after issuance of the Closing Disclosure three days before closing would have triggered an obligation to redisclose and to provide an additional three-business-day waiting period. The proposal would have permitted limited changes that would not have required an additional three-business-day period: revisions due to consumer-seller negotiations; revisions that do not increase the cash to close amount by more than $100; and revisions that result in refunds due to the good faith requirements in proposed § 1026.19(e)(3). As discussed in the section-by-section analysis of § 1026.19(f)(2)(i) and (ii), to avoid the risk of costly closing delays, the final rule narrows the circumstances that would trigger additional three-business-day periods to changes that would affect consumers over the life of the loan: where the loan's previously disclosed APR changes outside of the TILA tolerances, the loan product changes, or a prepayment penalty is added. Further, the Bureau received feedback indicating that the APR estimates included in the early TILA disclosures typically change by more than 1/8 of 1 percent before consummation occurs (the tolerance for many loans), such that most creditors already provide corrected disclosures three business days before consummation as a standard business practice, rather than analyzing the accuracy of the disclosed APR. Therefore, the Bureau believes that any additional burden associated with requiring the disclosure three business days before consummation in all cases would be minimal.

b. Responsibility for Providing the Closing Disclosure

TILA and RESPA require that different parties provide final disclosures to consumers. Specifically, TILA, as implemented by Regulation Z, requires the creditor to provide the TILA disclosures to consumers, while RESPA, as implemented by Regulation X, requires that the settlement agent provide the final statement of settlement costs to the consumer. However, section 1419 of the Dodd-Frank Act amended TILA to make creditors responsible for disclosing settlement cost information. *See* TILA section 128(a)(17). To reconcile these statutory differences and implement TILA section 128(a)(17), the Bureau proposed two alternative approaches for assigning responsibility for provision of the integrated Closing Disclosure to consumers: sole responsibility for provision of the Closing Disclosure by the creditor, with the recognition that the settlement agent could be engaged by the creditor to provide the Closing Disclosure; or sole responsibility for provision of the Closing Disclosure by the creditor without recognition of any involvement of a settlement agent. In the final rule, the creditor is ultimately responsible for providing the consumer with an integrated Closing Disclosure three business days before consummation and the other delivery requirements in the final rule, but creditors may rearrange division of responsibility with settlement agents to provide the Closing Disclosure, so long as delivery is conducted by one of them.

i. Costs to Covered Persons. The costs to creditors and to settlement agents under the final rule will depend on how creditors and settlement agents arrange to share responsibility for complying with the requirements relating to provision of the Closing Disclosure. The final rule's assignment of responsibility for provision of the Closing Disclosure to the creditor will likely require coordination on the part of creditors and settlement agents similar to what is done today.

One additional one-time cost, however, may be re-working that coordination to adjust to the new forms and timing requirement. As discussed above, the Bureau believes creditors face a one-time cost of improving coordination with settlement agents, and that this task will be performed primarily by legal and management staff, at an industry wide cost of $2.8 million. Symmetrically, the Bureau estimates that settlement agents will spend 8 hours improving coordination with creditors, at a one-time cost of $1.2 million industry wide. Going forward, the Bureau believes that coordination costs will be similar to those currently experienced, so neither creditors nor settlement agents should face increased ongoing costs.

Some commenters suggested that some of the duties associated with settlement are going to shift from settlement agents to creditors, due to creditors having additional incentives under the final rule to ensure timely provision of the Closing Disclosure. Commenters did not describe or provide evidence as to the extent to which this would occur or the extent to which such a shift would harm consumers. The Bureau is unable to estimate whether or to what extent this will occur; however, the Bureau believes that creditors' incentive to internalize the process is mitigated to the extent that creditors and settlement agents already coordinate between themselves. One of the main arguments that commenters provided is that creditors would monopolize the settlement market, resulting in integrated creditors-settlement agents, and thereby reducing competition in the settlement agent market. This argument is not supported by the law and economics literature.[379] While there are some situations where this argument might still apply,[380] none of these cases seem to be relevant in this context. Additionally, the points and fees thresholds for qualified mortgages under the 2013 ATR Final rule may mitigate these

[379] *See, e.g.,* Director, Aaron, and Edward H. Levi, "Law and the Future: Trade regulation." *Nw. UL Rev.* 51 (1956) at 281. Suppose that the creditor is a monopolist in the mortgage market while the settlement agent market is perfectly competitive. Then the creditor charges a price (through a higher interest rate and fees) that also reflects the fact that consumers are not paying an extra markup in the settlement market. If the creditor now becomes a monopolist in the settlement market as well, that should not affect the overall amount that the consumer pays.

[380] Economides, Nicholas. "Tying, Bundling, and Loyalty/Requirement Rebates." In *Research Handbook of the Economics of Antitrust Law.* Ed. Einer Elhauge, Northhampton, MA: Edward Elgar, 2012, at 121-143.

effects, to the extent that they discourage the use of affiliated service providers. To the extent that any such shift occurs, there could be a reduction in the rule implementation costs discussed above. Any settlement agents caused to exit the market by such a shift would of course incur no implementation costs whatsoever. Creditors, in turn, likely would not absorb all of these foregone settlement agent costs, but rather only some additional training costs.

ii. Alternatives considered. In developing the final rule, the Bureau also considered an alternative under which the creditor would have been solely responsible for delivering the Closing Disclosure to the consumer, without acknowledging that a settlement agent can provide the Closing Disclosure on behalf of the creditor. This alternative would have likely placed increased costs on creditors, because, as discussed above, RESPA and current Regulation X require that the person conducting the settlement provide the RESPA-required disclosures to consumers. This provision could have resulted in ambiguity in the rule regarding the role of settlement agents in the transaction, and, as stated by small entity representatives on the Small Business Review Panel, increases in costs for small entities.

The Bureau also considered an alternative under which the settlement agent would have sole responsibility for providing the Closing Disclosure to the consumer. However, the Bureau is not adopting this alternative based on its concern that settlement agents do not have access to much of the information regarding loan terms that must be included in the Closing Disclosure relative to creditors, which could lead to inaccuracies or delays of Closing Disclosures, as well as non-negligible coordination costs.

In addition, in response to industry feedback, the Bureau considered an approach that would bifurcate the Closing Disclosure into TILA-required and RESPA-required disclosures, with the creditor being responsible for the former, and the settlement agent being responsible for the latter. Under this alternative, the settlement agent would incur additional logistical burden, relative to the pre-statutory baseline. Creditors and settlement agents may have incurred one-time legal fees under this alternative, since those entities may have needed to contractually stipulate their respective duties or amend existing contractual arrangements in light of the rule. Settlement agents may also have needed to hire additional staff to handle the increased workload associated with collecting the relevant information and coordinating with creditors and third party service providers and preparing the disclosures. The Bureau is also concerned that such an approach would be confusing for consumers, would be impracticable, would result in additional regulatory burden because of the amount of overlap between TILA and RESPA disclosures, and would be inconsistent with the Dodd-Frank Act requirement to integrate the disclosures. In addition, the Bureau believes that the final rule permits creditors and settlement agents to identify the most efficient methods of communicating and dividing responsibility for the disclosure, because it does not assign in the regulation responsibility for particular tasks or portions of the disclosure to particular parties.

5. Implementation of New Disclosures Mandated by the Dodd-Frank Act

As discussed more fully in the section-by-section analysis above, title XIV of the Dodd-Frank Act added new disclosure requirements to TILA and RESPA for mortgage transactions, including several disclosures to consumers who are applying for a mortgage loan and two post-consummation disclosures concerning cancellation of escrow accounts for certain mortgage transactions and the partial payment policy disclosure for certain mortgages. The Bureau has structured the final rule to require inclusion of the application-related disclosures into the Loan Estimate and Closing Disclosure and required implementation of the post-consummation disclosures at the same time as the other changes. The Bureau believes that this approach will benefit consumers by providing the new information while minimizing paperwork and information overload. The Bureau believes that the one-time implementation costs will be negligible since creditors will be updating software and compliance systems to produce the new disclosures at the same time that they are implementing the integrated Loan Estimate and Closing Disclosure. Covered persons may incur some insignificant additional recurring costs associated with providing the post-consummation disclosures on an ongoing basis.

6. Major Provisions Considered but Not Implemented

a. Electronic, Machine Readable Record Retention

The proposed rule would have required the retention of records of compliance with the disclosure requirements for the Loan Estimate and Closing Disclosure in an electronic, machine readable format. After careful consideration, the Bureau has decided not to impose new machine readable data retention requirements for the Loan Estimate and the Closing Disclosure, or to require creditors to maintain other evidence of compliance in an electronic, machine readable format.

The Bureau believes that requiring the collection of electronic, machine readable records may have improved the ability of the Bureau and other regulators to monitor compliance with applicable requirements and to evaluate whether the rules adequately protect consumers against impermissible changes in settlement costs and loan terms. The Bureau believes that this improved ability may have benefitted consumers through improved compliance.

The Bureau does not believe the proposed recordkeeping requirements would have led to costs to consumers, beyond any costs that are passed through to consumers by creditors or loan originators. The Bureau believes covered persons, after incurring the one-time implementation costs of such a new requirement, may have also benefitted because of efficiency gains from facilitating data transmission through the mortgage loan origination process due to standardization. However, the Bureau determined, for reasons discussed earlier not to finalize the requirement in this final rule.

b. Expanded Definition of Finance Charge

As discussed more fully in the section-by-section analysis of § 1026.4, TILA and current Regulation Z exclude many types of charges from the finance charge, particularly for mortgage transactions. Concerns have long been raised that these exclusions undermine the potential usefulness of the finance charge and corresponding APR as a tool consumers can use to compare the total cost of one loan to another. In addition, these exclusions create compliance burden and litigation risk for creditors and may encourage creditors to shift the cost of credit to excluded fees, a practice that is inefficient and may lead to greater consumer confusion.

In the proposed rule, the Bureau proposed to revise the definition of "finance charge" by eliminating many of the current exclusion and thus to potentially make it more useful as a shopping tool. However, while the Bureau acknowledges that there are benefits to such an expanded finance charge definition for disclosure purposes, the Bureau has decided not to proceed with modifying the finance charge. If the Bureau had included more elements in the finance charge, more loans may have surpassed APR thresholds for HPMLs and HOEPA loans, which may have required creditors to comply with additional regulations, such as the escrow requirement for higher-priced mortgage loans. Mechanically, a change in the definition of APR would potentially result in situations where loan A has a higher APR than loan B under the current definition, but has a lower APR than loan B under the new definition. Consequently, even if the thresholds for HPML and HOEPA loans were reset, the same set of loans likely would not be covered. Therefore, it is a substantial task to adjust the finance charge and preserve the intent of APR thresholds in other regulations, which would impose considerable compliance burden on creditors. The Bureau also recognizes that the proposed revised definition of "finance charge" could create upfront implementation costs for creditors required to update systems and train staff on the new calculations. For these reasons, the Bureau believes it is appropriate to postpone consideration of any changes to the finance charge definition until the Bureau's other mortgage-related Dodd-Frank Act rulemakings are fully implemented and the Bureau has the opportunity to evaluate the potential benefits and implementation burdens.

F. Potential Specific Impacts of the Final Rule

1. Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, As Described in Section 1026

The Bureau believes that the impacts of the rule on depository institutions and credit unions with $10 billion or less in total assets will be similar to impacts on creditors as a whole, *mutatis mutandis*.[381]

The Bureau analyzed the effect of the final rule on depository institutions with $10 billion or less in assets, using methods and assumptions analogous to those used for creditors of all sizes. For depository institutions with $10 billion or less in assets, the one-time costs of complying with the rule are $170 million, amortized over 5 years, which is approximately $73 per transaction. This can be partitioned into $11.3 million per year for updating software for creditors who perform the process in-house, $152.8 million per year for implementation (including learning about the rule, gap analysis, software testing, trouble shooting, and ensuring smooth system functioning across systems), $3.4 million per year for training, and $2.1 million

[381] The only potential difference is the aforementioned theoretical possibility of creditors exiting the market. To the extent that this occurs, and the Bureau believes that it will not, it is more likely to occur for creditors with $10 billion or less in total assets.

per year for changing processes to ensure smooth delivery of all of the necessary information.

2. Impact of the Final Rule's Provisions on Consumers in Rural Areas

Consumers in rural areas may experience benefits and costs from the final rule that are different in certain respects to those experienced by consumers in general. The extent to which rural consumers shop for mortgages and the ways in which they shop may differ from the extent to which other consumers shop and the ways in which they shop, which may affect the benefits of the revised Loan Estimate. The Bureau is unaware of information on these differences, however.[382] To the extent that the impacts of the final rule on creditors differ by type of creditor, this may affect the costs and benefits of the final rule on consumers in rural areas.

3. Impact of the Final Rule on Consumer Access to Credit

The Bureau does not believe that the final rule will have a substantial effect on consumers' access to credit because the final rule does not directly affect the provision of particular types of mortgage products. While changes to the content and timing of disclosures and associated tolerance rules may incent creditors to offer one product type over another, the Bureau does not believe that the final rule will cause creditors to reduce their extension of credit.

The Bureau believes that access to credit may increase as a result of this rule. As discussed above, the Bureau believes that this rule may help consumers choose the loan that better fits their needs and may facilitate shopping, which would in turn decrease prices in the market. All of these factors might contribute to an increase in access to credit.

VIII. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial

[382] While the sample size was not sufficient to draw any definitive conclusions concerning any differences between rural and other consumers, the Quantitative Study did recruit study participants from rural areas. *See* Kleimann Quantitative Study Report at 70.

regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[383]

The Bureau also is subject to certain additional procedures under the RFA involving the convening of panel to consult with small business representatives prior to proposing a rule for which an IFRA is required.[384]

As discussed further below, for banks and other depository institutions, an entity is considered “small” if it has $500 million or less in assets and, for other financial businesses, an entity is considered “small” if it has average annual receipts (i.e., annual revenues) that do not exceed $35.5 million or $7 million, depending on the function of the business.[385] The Bureau did not certify that the rule would not have a significant economic impact on a substantial number of small entities. Thus, the Bureau convened a Small Business Review Panel to obtain advice and recommendations of representatives of the regulated small entities. The TILA-RESPA Proposal preamble included detailed information on the Small Business Review Panel.[386] The Panel’s advice and recommendations are found in the Small Business Review Panel Final Report;[387]

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383 For purposes of assessing the impacts of the final rule on small entities, “small entity” 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).

384 5 U.S.C. 609.

385 *See* U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (July 22, 2013) available at http://www.sba.gov/content/table-small-business-size-standards. (“SBA Size Standards”).

386 77 FR 51116, 51128-51129 (Aug. 23, 2012).

387 *See Final Report of the Small Business Review Panel on CFPB’s Proposals Under Consideration for Integration of TILA and RESPA Mortgage Disclosure Requirements* (Apr. 23, 2012), at 17, available at http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-sbrefa-feedback.pdf. (“Small Business Review Panel Report”).

several of these recommendations were incorporated into the proposed rule. The TILA-RESPA Proposal preamble also included a discussion of each of the panel's recommendations in the section-by-section analysis of the proposed rule.

The TILA-RESPA Proposal contained an IRFA,[388] pursuant to section 603 of the RFA. In this IRFA the Bureau solicited comment on any costs, recordkeeping requirements, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small businesses, comment regarding any Federal rules that would duplicate, overlap, or conflict with the proposed rule, and comment on alternative means of compliance for small entities. Comments addressing individual disclosure elements of the Loan Estimate and Closing Disclosure are addressed in the section-by-section analysis above. Comments addressing the impact on the cost of credit are discussed below.

Based on the comments received, and for the reasons stated below, the Bureau believes the final rule will have a significant economic impact on a substantial number of small entities. Accordingly, the Bureau has prepared the following final regulatory flexibility analysis pursuant to section 604 of the RFA.

1. A Statement of the Need For, and Objectives of, the Rule

For more than 30 years, TILA and RESPA have required creditors and settlement agents to give to consumers who take out a mortgage loan different but overlapping disclosure forms regarding the loan's terms and costs. This duplication has long been recognized as inefficient and confusing for consumers and industry. The following two paragraphs briefly summarize the statutory differences, which are described in more detail in part I and part II, above.

TILA/Regulation Z: In connection with any closed-end credit transaction secured by a

[388] 76 FR 27479-27480.

consumer's dwelling and subject to RESPA, TILA and Regulation Z require creditors to provide good faith estimates of loan terms (such as the APR) within three business days after receiving the consumer's mortgage application (the early TILA disclosure). If the APR on the early TILA disclosure becomes inaccurate, TILA requires the creditor to provide a corrected disclosure at least three business days before consummation (the corrected TILA disclosure). TILA requires that the disclosures be provided in final form at the time of consummation (the final TILA disclosure).

RESPA/Regulation X: In connection with any federally related mortgage loan, RESPA and Regulation X require that creditors provide a good faith estimate of the amount or range of charges for certain settlement services the borrower is likely to incur in connection with the settlement (such as fees for an appraisal or a title search) and related loan information within three business days after receiving the consumer's application (the RESPA GFE). RESPA also requires that "the person conducting the settlement" (typically, the settlement or closing agent) provide the consumer with a completed, itemized statement of settlement charges at or before settlement (the RESPA settlement statement).

Furthermore, the recent mortgage crisis highlighted deficiencies in consumer understanding of mortgage transactions, which may be attributed in part to shortcomings in mortgage disclosures. Part II.A of the final rule discusses in greater detail the background of the mortgage market. Prior to the creation of the Bureau, other government agencies took steps to address these shortcomings. Specifically, HUD, which was previously responsible for implementing RESPA, finalized rules in 2008 that substantially revised the RESPA mortgage disclosures (HUD's 2008 RESPA Final Rule). In addition, the Board, which was previously responsible for TILA, proposed rules in 2009 that would have substantially revised the TILA mortgage disclosures (the Board's 2009 Closed-End Proposal). However, neither HUD nor the Board had the authority to combine the TILA and RESPA disclosures.

As noted above, RESPA and TILA historically have been implemented by regulations of HUD and the Board, respectively, and the Dodd-Frank Act consolidated this rulemaking authority in the Bureau. In addition, the Dodd-Frank Act amended both statutes to mandate specifically that the Bureau propose rules and forms combining the TILA and RESPA disclosures for mortgage loans subject to either law or both laws by July 21, 2012. Dodd-Frank Act sections 1032(f), 1098, 1100A. On July 9, 2012, the Bureau issued a notice of the proposed rule, which was published in the *Federal Register* on August 23, 2012 (77 FR 51116).

The Dodd-Frank Act establishes two goals for the consolidation: to improve consumer understanding of mortgage loan transactions, and to facilitate industry compliance with TILA and RESPA. The Dodd-Frank Act also made several amendments to the disclosure requirements in TILA and RESPA. In particular, the Dodd-Frank Act amended TILA to require the creditor to disclose in the early and final TILA disclosures the aggregate amount of settlement charges provided in connection with the loan, which was previously disclosed only by the settlement agent in the RESPA settlement statement.[389] The final rule, therefore, both follows on the prior efforts of HUD and the Board to address shortcomings in the mortgage market with regard to mortgage disclosures and effectuates Congress's specific mandate to the Bureau to integrate the mortgage disclosures under TILA and RESPA. For a further description of the reasons why agency action was considered necessary, see the background discussion for the final rule in part II, above.

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[389] Section 1419 of the Dodd-Frank Act, adding section 128(a)(17) to TILA.

As described above, the final rule effectuates Congress's mandate to integrate the mortgage disclosures required under TILA and RESPA. In particular, sections 1098 and 1100A of the Dodd-Frank Act state that the purposes of the integrated disclosures are to facilitate compliance with TILA and RESPA and "to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures." Dodd-Frank Act sections 1098(2)(A), 1100A(5). The integrated disclosures also effectuate the underlying statutory purposes of RESPA and TILA. One of the statutory purposes of RESPA is "more effective advance disclosure to home buyers and sellers of settlement costs." 12 U.S.C. 2601(b)(1). And the statutory purpose of TILA is to "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." 15 U.S.C. 1601(a).

Furthermore, this rulemaking promotes consumer comprehension of financial disclosures. Section 1021(b) of the Dodd-Frank Act authorizes the Bureau to exercise its authorities to ensure that, with respect to consumer financial products and services, "consumers are provided with timely and understandable information to make responsible decisions about financial transactions." 12 U.S.C. 5511(b)(1). Section 1032(a) of the Dodd-Frank Act provides the Bureau with the authority to "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 final rule also is intended to provide other benefits for consumers. First, the new disclosure forms are simpler and more comprehensible, and their design has been refined to incorporate extensive consumer and industry feedback gathered through online tools and one-on-one testing across the country. *See* part III, above. By conveying information on key loan terms clearly, the redesigned disclosure forms may improve the ability of consumers to shop for and compare mortgage terms across loan offers and improve their understanding of mortgage loan transactions. Second, the final rule seeks to improve borrowers' ability to shop by more clearly delineating between estimates regulated by TILA and RESPA and non-binding preapplication estimates. Third, the final rule may reduce the magnitude and frequency of changes in costs between application and consummation and may decrease the likelihood that consumers will face unexpected changes in costs due to "bait and switch" tactics.[390]

Lastly, the Bureau is seeking to reconcile differences in the scope, terminology, and requirements of TILA, RESPA, and their current implementing regulations. As discussed above, the Dodd-Frank Act did not reconcile a number of statutory differences between TILA and RESPA (*e.g.*, the different requirements on the timing of disclosures and which party is responsible for providing the disclosures), which the Bureau needs to do in order to satisfy the mandate to integrate the disclosures. Moreover, the final rule clarifies and streamlines aspects of the current rules that have been identified as confusing by creditors, mortgage brokers, mortgage companies, and settlement agents, as well as by consumers who receive the disclosures. The Bureau believes these clarifications will resolve ambiguities, eliminate redundant or unnecessary disclosures, and more effectively disclose mortgage loan terms and costs to consumers. The legal basis for the final rule is discussed in detail in the legal authority analysis in part IV and in the section-by-section analysis in part V, above.

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[390] This discussion of the final rule's benefits to consumers is intended to be illustrative, not exhaustive. Additional consumer benefits that may result from the final rule are discussed in other sections of the final rule.

2. Summary of Significant Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

In accordance with section 603(a) of the RFA, the Bureau prepared an IRFA. In the IRFA, the Bureau estimated the possible compliance costs for small entities with respect to each major component of the rule against a pre-statute baseline. The Bureau requested comment on the IRFA.

Various commenters stated that without further guidance they would not be able to implement the proposed electronic, machine readable record retention requirement. In light of these comments, the Bureau understands that more prescriptive specifications of electronic, machine readable requirements, such as a well-defined data dictionary and format, would reduce the burden of compliance. As discussed further in the section-by-section analysis of § 1026.25 above, the Bureau has decided not to finalize the electronic, machine readable record retention requirement at this time, in part because creating these elements would require additional outreach beyond the scope of the proposed rulemaking.

With respect to the proposal to modify the finance charge, commenters, including individual creditors and trade associations, stated that expanding the finance charge would affect criteria based on the APR, such as which loans pass the higher-priced mortgage loan or HOEPA thresholds, as well as various State-level criteria. As discussed in the Dodd-Frank Act section 1022(b)(2) analysis above, it is not straightforward to recalibrate these thresholds in order to cover the same loans. Other commenters raised the possibility of retaining the current finance charge definition for purposes of threshold computation but disclosing the APR calculated with the more expansive finance charge. Because of the challenges associated with changing the finance charge, and its effects on the APR, without the data resources to estimate the potential impact of the change on the different thresholds, the Bureau has decided not to finalize the more inclusive finance charge at this time.

Many of the comments received in response to the IRFA focused on implementation and compliance costs. For example, several credit unions commented that they anticipated per-firm implementation costs of approximately $40,000 in addition to training costs. As discussed below, the Bureau estimates non-training costs of implementation of the same order of magnitude for small entities. In light of comments such as this and further analysis, the Bureau has increased its estimate of implementation and compliance costs. A title company commenter stated that a software vendor that it had consulted with would incur implementation costs of $200,000. While the Bureau cannot assess the accuracy of this claim because the commenter did not provide support for it that could be corroborated, the Bureau believes that costs incurred by software vendors will likely not be passed through to client creditors. As discussed in part VI above, in response to various comments about implementation time required, the Bureau has decided to set an implementation period that will last until August 1, 2015. One independent mortgage loan originator commented that it does not have the back office functions the Bureau uses in its impact analyses, and therefore would incur substantial costs to implement the final rule. These costs are likely to be mitigated by information that is passed on by vendors, as well as small entity compliance guides and other guidance that the Bureau provides throughout the implementation period.

The Bureau also received several comments about who provides the Closing Disclosure from trade associations, settlement companies, and creditors. The concerns raised include the possibility of dual closings (separate closings of the real estate and mortgage transactions), the threat of industry consolidation, the disadvantaging of affiliated title companies, and a move to the use of larger title companies. Since consumers can shop for title services, who provides the Closing Disclosure is unlikely to affect the price of title services, or the size of title companies used. Furthermore, the comments did not provide specific evidence that affiliated title companies are likely to be disadvantaged by the final rule. Since the final rule does not preclude creditors from coordinating with settlement agents, and mortgage transactions and real estate transactions are often linked since the latter provides the collateral for the former, the frequency of dual closings is unlikely to change. Please consult the section-by-section analysis above for additional discussion of these comments.

3. Response to the Office of Advocacy of the Small Business Administration Comment

The Office of Advocacy at the Small Business Administration (SBA) provided two formal comment letters to the Bureau in response to the proposed rule on the integration of the TILA and RESPA disclosures. Among other things, these letters expressed concerns about the electronic, machine readable recordkeeping requirements, the proposed changes to §1026.4 that would change the calculation of the finance charge, the integration of the initial and final closing disclosures, the provision of the Closing Disclosure, and the definition of application.

Since the Bureau is neither finalizing the proposed electronic, machine readable record keeping requirements nor finalizing the proposed change to an all-in finance charge, SBA's concerns about these issues are no longer directly relevant to the final rule. For example, because these changes will not be made, small businesses covered by the final rule will not have to revise their computer systems in light of these changes.

In its comment about the cost of the integration of the initial and final closing disclosures, one point that SBA raised was that not all of the costs associated with the final rule would be absorbed in annual updates. While the Bureau believes that the cost of vendor updates will not be passed on to creditors, the Bureau acknowledges, as it did in the proposal, that there will be one-time implementation costs. Based on comments received and further analysis, the Bureau has revised upwards its estimate of these one-time costs of implementation. SBA also stated that there would be increased cost of compliance reviews. The Bureau does not believe that there will be increased cost of compliance reviews as creditors are already examined for compliance with the RESPA GFE and the RESPA settlement statement.

SBA also identified possible issues with the three-business-day waiting requirement for the Closing Disclosure because some costs may change shortly before closing. The Bureau has considered the tradeoff between the amount of time a prospective borrower has to compare the Loan Estimate and the Closing Disclosure and the burden on industry of providing the disclosure one or more days prior to consummation, and believes that extending the waiting period is in the best interest of consumers. Some of SBA's roundtable participants stated that the requirement might conflict with State law. However, Federal law takes precedence over State law in this case.

SBA also raised issue with removing the seventh data element from the definition of application because it might create uncertainty about when the provision of the Loan Estimate is required as well as require the Loan Estimate to be provided earlier in the process. SBA asserted that loan estimates may also be less accurate, and therefore be more likely to have to be redisclosed. To the extent that creditors may request other information prior to, or simultaneously with, their request of the other six data elements, the Bureau believes that this will mitigate the timing and completeness effects of removing the seventh element. While it is true that eliminating the seventh element might render estimates of costs provided by creditors less accurate, this must be weighed against the consumer's certainty about the timing of the Loan

Estimate, as well as being simultaneously and well informed about all of his or her potential options. In relation to the components of an application, a trade association representing community banks suggested that "property address" should be an optional element. It is important to note that the Loan Estimate is not analogous to a preapproval letter, which is based on borrower credit quality alone, and that underwriting a loan property address, which is a necessary element in estimating value, is fundamental.

SBA reiterated a claim made by several SERs about permissible changes to settlement costs and redisclosure of the initial disclosure: there may be unintended consequences of reducing certain charges from the 10 percent tolerance category to the zero percent category. This, they claimed, would lead to a reduction in competition. The Bureau believes that to the extent there are long run effects, it is not obvious that the consequence of the new tolerances is firms exiting the market. For example, firms might be able to absorb the costs of overestimates, or the new tolerances might lead to more transparent and consistent pricing of services by both affiliates and independent service providers. Even if there are exits from the market by some firms, the Bureau believes that the markets will remain competitive and that there also may be new entrants (but this is likely to result from regular turnover).

SBA questioned the appropriateness of applying the rule under which Loan Estimates not delivered in person are considered to be received three days after they are sent in the context of instantaneous delivery, such as through secure electronic transmission. The Bureau is not persuaded by the argument that the Bureau should adjust the final rule to reflect that disclosures provided by electronic delivery should be subject to a different standard. The Bureau believes that it would require more information regarding the many different forms of delivery methods available to creditors, including technical information regarding different forms of electronic delivery, before it issues a rule applying such different standards. Similarly, the SBA questioned the proposal to treat Saturday as a business day for purposes of the three-business-day rule. As discussed above, the Bureau has decided not to adopt this aspect of the proposal.

4. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply

As discussed in the Small Business Review Panel Report, for purposes of assessing the impacts of the final rule on small entities, "small entities" is defined in the RFA to include small businesses, small nonprofit organizations, and small governmental jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards.[391] 5 U.S.C. 601(3). Under the 2012 revision of such standards, banks and other depository institutions are considered "small" if they have $500 million or less in assets, and for other financial businesses, the threshold is average annual receipts (*i.e.*, annual revenues) that do not exceed $35.5 million or $7 million, depending on the function of the business.[392]

During the Small Business Review Panel process, the Bureau identified six categories of small entities that may be subject to the final rule for purposes of the RFA. These are the categories of entities that may be required to provide, and maintain related records on, the integrated disclosures, either because they may make residential mortgage loans or because they may be responsible for completing or providing required disclosures. The categories and the

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[391] The current SBA size standards are found on SBA's website at http://www.sba.gov/content/table-small-business-size-standards.

[392] *See id.*

current SBA small entity thresholds for those categories are: (1) commercial banks[393] with up to $500,000,000 in assets, (2) credit unions with up to $500,000,000 in assets, (3) mortgage brokers with up to $7,000,000 in annual revenue, (4) mortgage companies (non-bank creditors) with up to $35,500,000 in annual revenue, (5) settlement (closing) agents with up to $10,000,000 in annual revenue, and (6) nonprofit organizations that are not for profit, independently owned and operated, and not dominant in the field.[394]

The following table provides the Bureau's estimate of the number and types of entities that may be affected by the final rule:[395]

[393] For purposes of the Bureau's Small Business Review Panel Outline circulated in advance of the Panel Outreach Meeting, the categories of commercial banks and savings institutions were combined under the label "commercial banks." The list of SERs identified in Chapter 7 of the Small Business Review Panel Report includes one representative of a savings institution.

[394] Comprehensive information about non-profit activity in the mortgage market is not available, so nonprofits are not included as a separate category in the table that describes the estimated number of affected entities and small entities by NAICS code. To the extent that non-profits fall into any of the NAICS codes included in the table, they are included.

[395] In the Small Business Review Panel Report, chapter 9.1, a preliminary estimate of affected entities and small entities was included in a similar format (a chart with clarifying notes). *See* Small Business Review Panel Report at 26-27.

TILA-RESPA Integrated Disclosures: Estimated number of affected entities and small entities by NAICS code and engagement in closed-end mortgage transactions

Category	NAICS	Small entity Threshold	Total entities	Small entities	Entities engaged in closed-end mortgage transactions	Small entities engaged in closed-end mortgage transactions
Commercial banks & savings institutions[a]	522110, 522120	$500,000,000 assets	7435	6080	7230	5913
Credit unions[b]	522130	$500,000,000 assets	7240	6845	4178	3784
Mortgage companies (Non-bank creditors)[c]	522292	$35,500,000 revenues	2787	2672	2787	2672
Mortgage brokers[d]	522310	$7,000,000 revenues	24,792	19,267	24,792	19,267
Settlement agents[e]	541191	$10,000,000 revenues	8261	8131	8261	8131

a. Asset size obtained from December 2011 Call Report data as compiled by SNL Financial. Savings institutions include thrifts, savings banks, mutual banks, and similar institutions. Estimated number of creditors originating any closed-end mortgages is based on 2011 HMDA data and, for entities that do not report to HMDA, loan counts are projected based on Call Report data and counts for HMDA filers.

b. Asset size and engagement in closed-end mortgage loans was obtained from December 2011 National Credit Union Administration Call Report. Count of credit unions engaged in closed-end mortgage transactions may include some institutions that make only first-lien, open-end loans.

c. Total number of entities and small entities was estimated based on the NMLS Mortgage Call Report (MCR) data for 2011. Entities that report to MCR are considered to be engaged in closed-end mortgage transactions if they report either: (1)

originating or brokering at least one closed-end mortgage; or (2) a positive dollar value of originated or brokered loans. The estimated number of small entities is based on predicting the likelihood that an entity's revenue is less than the $35.5 million threshold based on the dollar value and number of loans originated and the dollar value and number of loans brokered.

d. Total number of entities and small entities estimated based on 2007 Economic Census data. Number of entities under SBA threshold includes all entities under $7,000,000 in revenue, due to the level of aggregation of public use data from the Economic Census. All entities are assumed to engage in closed-end mortgage transactions.

e. Total number of entities and small entities estimated based on 2007 Economic Census data. All entities are assumed to engage in closed-end mortgage transactions.

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final rule imposes new disclosure requirements on covered persons, and therefore recordkeeping requirements are modified appropriately (as discussed below). Even so, this does not result in a net increase in recordkeeping requirements. The final rule does, however, impose new compliance requirements on certain small entities. The requirements to integrate the TILA and RESPA disclosures and the imposition of new disclosure requirements under the Dodd-Frank Act, Title XIV, appear specifically in the Dodd-Frank Act. Thus, to a large extent, the impacts discussed below are impacts of the statute, not of the regulation *per se,* that is, the Bureau discusses impacts against a pre-statute baseline.

a. Reporting Requirements

The final rule does not impose new reporting requirements.

b. Recordkeeping Requirements

The current record retention period is two years under Regulation Z, which supports private actions and regulatory enforcement actions. However, the CFPB has decided to require creditors to retain evidence of compliance with the integrated disclosure provisions of Regulation Z for three years after consummation of the transaction, except that creditors must retain the Closing Disclosure and all documents related to the Closing Disclosure for five years after consummation, consistent with the requirements of existing Regulation X. The final rule also requires that if a creditor sells, transfers, or otherwise disposes of its interest in a mortgage and does not service the mortgage, the creditor shall provide a copy of the Closing Disclosure to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain such disclosures for the remainder of the five-year period. The CFPB recognizes that this requirement is different from the current requirements under Regulation X, which does not require a creditor to maintain these documents if the creditor disposes of its interest in the mortgage loan and does not service the mortgage loan. In addition, the final rule requires creditors and mortgage brokers to retain documentation sufficient to show their supervisory agencies that one of the exceptions applies whenever a cost for a service provided by a company that is owned by or affiliated with the creditor proves to be higher than estimated in the Loan Estimate in excess of the tolerances under § 1026.19(e)(3) and a revised Loan Estimate is provided, similar to the current document retention requirements under Regulation X for when the RESPA GFE is reissued. These retention requirements may result in additional cost to respondents that are creditors and mortgage brokers. However, the Bureau believes that any burden associated with the final rule's record keeping requirement will be minimal or *de minimis*, since only information sufficient to reconstruct the required record is required to be retained.

The final rule does not finalize the electronic, machine readable recordkeeping requirements proposed in the TILA-RESPA Proposal.

c. Compliance Requirements

The final rule contains specific provisions with regulatory or commentary language. The analysis below considers the benefits, costs, and impacts of the following major provisions on small entities:

1. The integration of the initial and closing disclosures (the Loan Estimate and Closing Disclosure, respectively),
2. The definition of "application",
3. Permissible changes to settlement costs and redisclosure of initial disclosures,
4. Provision of the Closing Disclosure, and
5. Implementation of new disclosures mandated by the Dodd-Frank Act.

Baseline for Analysis

The analysis examines the benefits, costs, and impacts of the major provisions of the final rule against a pre-statutory baseline. This means that to the extent there are benefits, costs, or other relevant impacts emanating from the relevant provisions of the Dodd-Frank Act, the Bureau combines those with the benefits, costs, and impacts of the regulation itself in conducting this analysis. The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

1. Integrated Initial and Closing Disclosures

The final rule requires that the Loan Estimate be provided to consumers within three business days after receipt of the consumer's application, to replace the early TILA disclosure and RESPA GFE, and that the Closing Disclosure be provided to consumers at least three business days prior to consummation, to replace the final TILA disclosure and RESPA settlement statement. As discussed above, TILA authorizes the Bureau to publish model forms for the TILA disclosures, while RESPA authorizes the Bureau to require the use of standard forms (*e.g.*, the current RESPA GFE and RESPA settlement statement forms). Accordingly, the Bureau is requiring the use of standard Loan Estimate and Closing Disclosure forms for mortgage loan transactions that are subject to RESPA. For transactions that are subject only to TILA, however, the forms are not being required. Rather, consistent with the provisions of that statute, the forms are model forms. The final rule also incorporates prior informal guidance regarding compliance with HUD's 2008 Final RESPA Rule into Regulation Z and official commentary, as necessary and appropriate.

Benefits to Small Entities

The integration of the early TILA disclosure and the RESPA GFE, and the final TILA disclosure and the RESPA settlement statement, may benefit small entities, including small creditors, mortgage brokers, and settlement agents that provide the disclosures. It will reduce the number of disclosures that covered persons need to prepare and provide and the number of disclosure-provision systems and processes that covered persons need to maintain. In addition, the three-page Loan Estimate will replace a three-page RESPA GFE and two-page early TILA disclosure, as well as address other new disclosure requirements in the Dodd-Frank Act.

Most small entities that participated in the Small Business Review Panel process stated that the integrated forms would make it easier to explain transactions to consumers, although one letter from several small entity settlement agents indicated that the new forms could actually lead to more questions during a closing. Information submitted by several settlement agents indicates that requiring the use of standard forms and clearer regulatory guidance could save as much as

30 minutes per closing by standardizing practices across creditors and reducing confusion. Based on information from the Bureau of Labor Statistics, the typical hourly wage of a settlement agent employee is $34 and the typical hourly wage of a loan officer is $48, giving a dollar savings in labor cost from the simplified closing forms of $17 to $24 per closing. Most of these savings will likely be passed on to consumers.

The integrated disclosures also permit creditors to consolidate certain numerical calculations. For example, Regulations Z and X currently require two different calculations for the disclosure of monthly payment information on the early TILA disclosure and the RESPA GFE. The integrated Loan Estimate consolidates these calculations into one monthly payment disclosure, which may facilitate compliance and ease burden on small entities. Other examples of overlapping but potentially different numerical disclosures required under Regulations Z and X include information about balloon payments and prepayment penalties.

Costs to Small Entities

The integrated Loan Estimate and the Closing Disclosure will result in certain compliance costs to small entities. The Bureau believes many of the costs of complying with these requirements would be common across the two disclosures, and therefore discusses them together here. In addition, the Bureau believes these costs would consist primarily of one-time costs to revise software and compliance systems, as other costs of compliance should not vary significantly from the costs of complying with existing regulations.

Small entities would need to adapt their software and compliance systems to provide the new forms. In addition to changing the format of the required forms, the new forms include several new disclosures that are required by the Dodd-Frank Act. Accordingly, the cost of adapting software and compliance systems in connection with these new disclosures will be included in the cost of adapting software and compliance systems to provide the new forms. Therefore, the Bureau does not provide separate estimates for the costs of adding this additional information.

Based on information provided by creditors and by software vendors, the Bureau believes that, in general, small creditors primarily rely on software and compliance systems provided by outside vendors. One of the SERs estimated that 95 percent of creditors that originate less than $5 billion in mortgages per year, which would include all small creditors, rely on vendors. The use of vendors by small creditors will substantially mitigate the costs of revising software and compliance systems, as the efforts of a single vendor would address the needs of a large number of creditors. Based on discussions with vendors that provide software and compliance systems to mortgage creditors, the costs of these updates would not be directly passed on to the small creditors.

Based on feedback provided by small entities that participated in the Small Business Review Panel process, the Bureau estimates that smaller creditors that maintain their own compliance software and systems would incur costs of roughly $100,000 to determine what changes need to be made and to update their systems to comply with the final rule. The total cost for these smaller creditors that maintain their own compliance software and systems is therefore $100,000*12,369 *5%=61,845,000.

Small creditors that are covered persons would incur one-time costs associated with training employees to use new forms and any new compliance software and systems. The Bureau estimates that each loan officer or other loan originator will need to receive eight hours of training. For every 10 hours of loan officer training, it is assumed that there is 1 hour of dedicated trainer time. For each hour of loan officer training time, it is assumed that back-office staff is trained for 0.67 hours. The Bureau estimates that there are 27,771 loan officers or other originators at small creditors, who earn on average $48 per hour, for a total training cost of $15,500,000. Small creditors will also need to develop training and compliance materials, at a cost of $35,271,000. As was assumed with all creditors, legal or management staff at each creditor spends 8 hours coordinating with entities that conduct settlements, at a total cost of $11,500,000.

The Bureau estimates that total costs to small creditor covered persons of revising software and compliance systems, including three months of software vendor training, installation, troubleshooting, and in-house testing time, would be $480,741,000. It is important to note that this is a one-time cost, and not a recurring cost. For additional perspective, the Bureau estimates that there were 880,286 covered mortgage originations in 2011, the most recent year for which data are available, for a total cost of implementing the new disclosure requirements of $123 per origination, amortized over 5 years.

The total costs for small settlement agents are computed using similar categories. The one-time costs for small settlement agents is $264,900,000, which can be broken down into $30,500,0000 for training settlement agents, $2,200,000 for coordination between settlement agents and creditors, $199,000,000 for software vendor training and installation, troubleshooting, and training on software, and $33,200,000 for developing settlement agent training materials.

2. Definition of Loan Application

The final rule revises the regulatory definition of the term “application” to provide clarity to consumers regarding when a Loan Estimate must be provided by a creditor or mortgage broker. Under TILA and RESPA, a creditor or mortgage broker is not required to provide the good faith estimates of loan terms and settlement costs in the early TILA disclosure and RESPA

GFE until it has received an "application." As discussed more fully in the section-by-section analysis of § 1026.2(a)(3) above, under current regulations, the receipt of the following information by the creditor or mortgage broker constitutes receipt of an "application": (1) borrower's name; (2) borrower's monthly income; (3) borrower's social security number to obtain a credit report; (4) the property address; (5) an estimate of the value of the property; (6) mortgage loan amount sought; and (7) any other information deemed necessary by the creditor. The seventh item could allow creditors and mortgage brokers to delay providing the integrated Loan Estimate until after collection of the six specific items, to collect any information they deem "necessary." By providing a bright line standard governing when the Loan Estimate must be provided, the final rule will enable consumers to understand the application stage of their mortgage loan transactions, specifically, when they can obtain the Loan Estimate that contains reliable estimates that are subject to the good faith estimate and tolerance requirements of § 1026.19(e). This bright line standard will better enable consumers to plan their shopping for mortgage loans. In addition, this bright line standard will facilitate compliance for industry and supervisory agencies that examine for compliance with the integrated disclosure requirements. The final rule removes the seventh item ("any other information deemed necessary by the creditor") from the definition of "application."

Costs to Small Entities

The Bureau understands that eliminating creditors' and mortgage brokers' ability to wait to provide a good faith estimate until after they receive "any other information deemed necessary" could increase the burden on small creditors and mortgage brokers to the extent that it causes them to issue more Loan Estimates than they would under the current definition of application. If a creditor or mortgage broker obtains additional information from the borrower after the Loan Estimate has been issued that affects the costs of the settlement service for the loan, the creditor may need to issue a revised Loan Estimate. The Bureau is unaware of information that would allow it to estimate how often this would occur. The Bureau believes, however, that many creditors and mortgage brokers will mitigate this potential cost by adjusting their business practices surrounding the receipt of applications to gather other important information prior to, or at the same time as, they obtain the six items that together constitute an "application."

3. Changes in Settlement Costs/Redisclosures

The final rule revises current rules regarding the circumstances in which a consumer may be charged more at closing for settlement services than the creditor estimated in the disclosure provided to the consumer three business days after application. As discussed more fully in the section-by-section analysis of §1026.19(e)(3) above, HUD's 2008 RESPA Final Rule limits the circumstances in which a creditor can charge the consumer more at consummation for settlement services than the creditor estimated in the RESPA GFE provided to the consumer three business days after application. These rules generally place charges into three categories: the creditor's charges for its own services, which cannot exceed the creditor's estimates unless an exception applies ("zero tolerance"); charges for settlement services provided by third parties, which cannot exceed estimated amounts by more than 10 percent unless an exception applies ("10 percent tolerance"); and other charges that are not subject to any limitation on increases ("no tolerance"). The rules permit certain limited exceptions in which higher charges are permitted, such as when the borrower requests a change, when the RESPA GFE expires, or when valid changes in circumstance occur. The Bureau is aware of concerns that HUD's 2008 RESPA Final Rule is both too lax and too restrictive, and also that the rule is difficult to understand. The final rule attempts to address these concerns by balancing the objective of improving the reliability of the estimates creditors give consumers shortly after application with the objective of preserving creditors' flexibility to respond to unanticipated changes that occur during the loan process. Specifically, the final rule applies the zero tolerance category to a larger range of charges, including fees charged by an affiliate of the creditor and charges for services for which the creditor does not permit the consumer to shop. A service provider is considered to be selected by the creditor if consumers are required to choose only from a list of service providers prepared by the creditor (*i.e.*, if consumers are not permitted to shop for their own provider).

Benefits to Small Entities

Small entities may benefit from the final rule because it reduces compliance burden by resolving current regulatory ambiguities. For example, the final rule revises the current rule on and provides additional guidance regarding use of average cost pricing. The final rule further streamlines and clarifies HUD's 2008 RESPA Final Rule by incorporating prior HUD guidance into Regulation Z and its commentary, as necessary and appropriate. Further, to the extent the final rule reduces unnecessary redisclosure of the RESPA content currently provided on the GFE, the rule decreases costs to creditors, although the extent to which the final rule would have such an effect is unknown. Reducing unnecessary redisclosure may also benefit consumers, to the extent that redisclosures lead to consumer confusion.

The Bureau is unaware of reliable data showing how often creditors are providing additional disclosures that are not required by the current rule and that they would no longer send under the final rule. Some creditors, however, have reported that additional clarity regarding redisclosure requirements for the RESPA GFE and average cost pricing would reduce the cost of compliance, in part, by reducing confusion over when redisclosure is permitted or required, and thereby reducing the need for the involvement of the compliance department in everyday business activities and any legal advice that a creditor might seek.

Costs to Small Entities

The Bureau understands that small entities may experience increased costs as a result of applying the zero tolerance category to a larger range of charges. Since the final rule expands the circumstances in which creditors cannot pass on increased costs to consumers when the initial estimate is lower than the actual costs, creditors may be required to absorb more costs when no exception, such as a legitimate change in circumstances, is present. This impact should be mitigated to the extent creditors are in a position to know the typical charges of affiliated firms and firms they engage repeatedly and require consumers to use, and can therefore provide estimates that are accurate when there is no changed circumstance. As discussed above, the Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs, and the causes of those changes. Therefore, the Bureau cannot provide estimates of how often creditors would have to absorb higher than expected costs that cannot be attributed to a changed circumstance. The Bureau also understands that the final rule may result in increased use of affiliated service providers, so that creditors can more directly control changes in settlement costs, which could have a negative impact on independent providers who are typically small entities. Some commenters argued that the negative impact on independent providers could lead to reduced competition for settlement services and ultimately higher costs for consumers. The Bureau is unaware of any evidence that such an increase in costs is likely to occur. Alternatively, the final rule may encourage creditors to allow borrowers to choose settlement service providers that are not on a list provided to the borrower, so that the zero tolerance requirement would not apply. This would appear to benefit independent service providers, or at least be neutral relative to current practices.

4. Provision of Closing Disclosure

The final rule requires delivery of the integrated Closing Disclosure three business days before consummation in all cases. The final rule makes the creditor responsible for providing the Closing Disclosure, but allows for either the creditor or the settlement agent to provide it.

Timing of Closing Disclosure Provision

TILA and RESPA establish different timing requirements for disclosing final loan terms and costs to consumers. As discussed more fully in the section-by-section analysis of § 1026.19(f)(1)(i) above, TILA generally provides that, if the early disclosures contain an APR that is no longer accurate, the creditor shall furnish an additional, corrected disclosure to the consumer not later than three business days before consummation. RESPA, on the other hand, requires that the final statement of loan costs and terms be provided to the consumer at or before settlement, with the borrower permitted to request an inspection of the RESPA settlement statement one day prior to closing. To meet the Dodd-Frank Act's mandate to integrate the disclosures required by TILA and RESPA, and to better facilitate consumer understanding of final loan terms and closing costs, the final rule requires delivery of the integrated Closing Disclosure three business days before closing in all circumstances. However, to prevent unnecessary closing delays, the final rule permits limited changes after provision of the Closing Disclosure to reflect common adjustments, such as changes to recording fees. A new Closing Disclosure must be provided with a new three-day-waiting period if and only if one of the following triggers is met: the APR becomes inaccurate, as defined in § 1026.22, the product type changes, or a prepayment penalty is added.

Costs to Small Entities

The required provision of the Closing Disclosure three business days prior to consummation in all circumstances may result in closing delays. In extreme cases, such delays could cause a transaction to fall through if a consumer is under a contractual obligation to close by a certain date. Creditors and closing agents, however, currently coordinate to provide RESPA closing documents at closing. Both closing agents and creditors have incentives to complete closings as scheduled, and therefore the Bureau believes that they will adjust their business practices such that the Closing Disclosure will be provided in a timely manner and closing problems will be infrequent. If the requirement does lead to delayed or canceled closings, this would impose costs on small entities. Such closing delays could result in loss of revenue for transactions that fall through due to a delay. The final rule may also create legal and reputational risks for creditors or settlement agents that are unable to close loans as planned.

As discussed above, to prevent unnecessary closing delays, the final rule permits limited changes after provision of the Closing Disclosure to reflect common adjustments, such as changes to recording fees. A new Closing Disclosure must be provided with a new three-day-waiting period if and only if one of the following triggers is met: the APR becomes inaccurate, as defined in § 1026.22, the product type changes, or a prepayment penalty is added. The Bureau believes these changes will help reduce or minimize costs imposed on small entities.

Responsibility for Providing the Closing Disclosure

TILA and RESPA require that different parties provide the final disclosures to consumers. Specifically, TILA requires the creditor to provide the final TILA disclosure to consumers, while RESPA requires that the person conducting the settlement provide the final statement of settlement costs to the consumer. However, section 1419 of the Dodd-Frank Act amended TILA to make creditors responsible for disclosing settlement cost information. *See* TILA section 128(a)(17). To reconcile these statutory differences and implement TILA section 128(a)(17), the final rule makes the creditor ultimately responsible for provision of the Closing Disclosure three business days before closing, but creditors may use settlement agents to provide the Closing Disclosure, provided that they comply with the final rule's requirements for the Closing Disclosure.

Costs to Small Entities

The costs to creditors and to settlement agents of potential joint responsibility for provision of the Closing Disclosure depend on how creditors and settlement agents go about fulfilling such responsibility. Joint provision would likely require coordination on the part of creditors and settlement agents similar to what is done today, which could indicate that any additional costs to creditors or settlement agents would be minimal. One additional cost, however, may be re-working that coordination to adjust to the new forms and timing requirement (discussed above).

5. Implementation of New Disclosures Mandated by the Dodd-Frank Act

As discussed more fully in the section-by-section analysis above, title XIV of the Dodd-Frank Act added new disclosure requirements to TILA and RESPA for mortgage transactions. With respect to the disclosures included in the Loan Estimate and Closing Disclosure, although the Dodd-Frank Act does not specifically require inclusion of all of these new disclosures, the Bureau believes these disclosures should be included in the integrated forms because doing so will improve the overall effectiveness of the integrated disclosure, which may benefit consumers and covered persons, and also reduce burden on covered persons. Finalizing the rules implementing these title XIV disclosures simultaneously with the final TILA-RESPA rule will avoid unnecessary regulatory burden by preventing creditors from having to implement multiple rounds of disclosure rules. The Bureau does not anticipate additional costs to covered persons as a result of the new disclosure requirements included in the Loan Estimate and Closing Disclosure.

Beyond introducing the Loan Estimate and Closing Disclosure, the final rule also includes distinct escrow[396] and partial payment[397] disclosures, as discussed more fully in the section-by-section analysis above. With respect to the Post-Consummation Escrow Cancellation Notice and Partial Payment Policy disclosure, which are not and cannot be included in the Loan Estimate and Closing Disclosure because they are delivered post-consummation, the additional costs are likely to be minimal and the disclosures should be relatively easy to implement because creditors already have to revamp their origination process due to the newly integrated TILA and RESPA disclosures.

d. Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

Section 603(b)(4) of the RFA requires an estimate of the classes of small entities which will be subject to the requirement. The classes of small entities which will be subject to the reporting, recordkeeping, and compliance requirements of the final rule are the same classes of

[396] Section 129D(j)(1)(B) establishes that a creditor or servicer must provide disclosures after consummation with the information set forth under TILA section 129D(j)(2) when a consumer chooses, and provides written notice of the choice, to close the consumer's escrow account established in connection with a consumer credit transaction secured by real property and in accordance with any statute, regulation, or contractual agreement (the Post-Consummation Escrow Cancellation Disclosure). 15 U.S.C. 1639d(h). See the section-by-section analysis of § 1026.20(e).

[397] Specifically, section 129C(h) requires a person who becomes a creditor of an existing "residential mortgage loan" to disclose the following regarding partial payments: (i) the creditor's policy regarding the acceptance of partial payments; and (ii) if they are accepted, how such payments will be applied to the mortgage loan, and if such payments will be placed in escrow. 15 U.S.C. 1639c(h). This requirement is in addition to the identical disclosure required before settlement that was added to TILA by section 1414(d) of the Dodd-Frank Act, which the Bureau is implementing in § 1026.38(l)(5), as described above. See the section-by-section analysis of § 1026.39.

small entities that are identified above in part VIII.B.3.

Section 603(b)(4) of the RFA also requires an estimate of the type of professional skills necessary for the preparation of the reports or records. The Bureau does not anticipate that, except in certain rare circumstances, any professional skills required for reporting, recordkeeping, and other compliance requirements of this final rule will be required that are not otherwise required in the ordinary course of business of the small entities affected by the final rule. Part VIII.B.4.b and 4.c summarizes the recordkeeping and compliance requirements of the final rule that will affect small entities.

With regard to the compliance requirements, as discussed above, the Bureau understands that, based on feedback from the SERs, the small entities that will be affected by the final rule will continue to perform the basic functions that they perform today: generating disclosure forms (and answering consumers' questions about them), taking loan applications, redisclosing estimates of settlement costs, providing final disclosures, and maintaining systems to calculate the APR. The major elements of the final rule, described earlier in this part VIII, relate to these continuing functions. Therefore, the Bureau believes that small entities will have the professional skills necessary to comply with the final rule.

Specifically with regard to the requirement to use the integrated disclosure forms, the SERs identified potentially significant one-time costs associated with changing software systems to produce the forms and provided a wide range of estimates of one-time costs of training staff and related parties to use the new integrated forms and update systems and processes.[398] The SERs also reported that they typically contract out to third party software vendors the design of the disclosure forms provided to consumers, and pay annual fees to such vendors for upgrades.

[398] *See* Small Business Review Panel Report at 18.

The SERs did not express any concerns that the design and implementation of the forms or the use of the integrated disclosure forms on an ongoing basis would require their staff to possess a different set of professional skills than that required in the ordinary course of business currently. Furthermore, while the SERs identified potential upfront and ongoing training costs as a result of the proposals under consideration at the time, the Bureau believes efforts to train small entity staff on the updated software and compliance systems will reinforce existing professional skills, rather than require staff to acquire skill sets above those needed in the ordinary course of business, and to comply with HUD's 2008 Final RESPA Rule (which, as discussed above, significantly overhauled the design and content of the RESPA GFE and settlement statement disclosures given to consumers).

In addition, although the Bureau acknowledges the possibility that certain small entities may have to hire additional staff as a result of certain aspects of the final rule,[399] the Bureau has no evidence that such additional staff will have to possess a qualitatively different set of professional skills than small entity staff employed currently. The Bureau presumes that any additional staff that small entities may need to hire would be of the same professional skill set as current staff, since this final rule will be reallocating existing responsibilities among creditors and settlement agents. As a more general matter, to the extent the final rule adds new disclosures that will need to be generated and explained to consumers, the Bureau anticipates that any incremental increase in the complexity of such tasks for small entity staff may be counterbalanced by the regulatory streamlining and clearer guidance provided by the final rule.

6-1. Description of the Steps the Agency Has Taken To Minimize the Significant

[399] For example, as discussed in part VIII.B.4.c.(4), small entity creditors may need to hire additional temporary or permanent staff to handle the increased workload associated with collecting the settlement costs and coordinating with the settlement agents and third party service providers.

Economic Impact on Small Entities

The Bureau understands the new provisions will impose certain costs on small entities, and has attempted to mitigate the burden where it can be done without unduly diminishing consumer protection. The section-by-section analysis of each provision contains a complete discussion of the steps taken to minimize burden for small entities.

Since the disclosures are mandatory for all transactions covered by RESPA, the Bureau believes that once the new disclosures are implemented, the ongoing cost of providing the disclosures will not have a major impact on small entities covered by the rule versus larger entities covered by the rule. Similarly, the tolerance rules and timing requirements align for small and large entities, and are calculated similarly on a per-loan basis. To the extent that small entities may have less sophisticated information technology systems, the Bureau's decision not to finalize the proposed electronic, machine readable record retention requirement or the proposed expansion of the finance charge reduces burden on small entities relative to what would have been required if these proposals had been finalized, since they will not have to upgrade their information technology systems in these ways to comply with the final rule.

6-2. Description of the Steps the Agency has taken to Minimize Any Additional Cost of Credit for Small Entities

Section 603(d) of the RFA requires the Bureau to consult with small entities regarding the potential impact of the proposed rule on the cost of credit for small entities and related matters. 5 U.S.C. 603(d). To satisfy these statutory requirements, the Bureau provided notification to the Chief Counsel on February 7, 2012, that the Bureau would collect the advice and recommendations of the same small entity representatives identified in consultation with the Chief Counsel through the Small Business Review Panel process concerning any projected impact of the proposed rule on the cost of credit for small entities.[400] The Bureau sought to collect the advice and recommendations of the small entity representatives during the Small Business Review Panel Outreach Meeting regarding the potential impact on the cost of business credit because, as small financial service providers, the SERs could provide valuable input on any such impact related to the proposed rule.[401]

At the time the Bureau circulated the Small Business Review Panel Outline to the SERs in advance of the Small Business Review Panel Outreach Meeting, it had no evidence that the proposals then under consideration would result in an increase in the cost of business credit for small entities. Instead, the summary of the proposals stated that the proposals would apply only to mortgage loans obtained by consumers primarily for personal, family, or household purposes, and the proposals would not apply to loans obtained primarily for business purposes.[402] The Bureau has no evidence that the final rule will result in an increase in the cost of business credit for small entities. Instead, the final rule will apply only to mortgage loans obtained by consumers primarily for personal, family, or household purposes and the final rule will not apply to loans obtained primarily for business purposes. At the Small Business Review Panel Outreach Meeting, the Bureau asked the SERs a series of questions regarding cost of business credit issues.[403] The questions were focused on two areas. First, the SERs from commercial banks/savings institutions, credit unions, and mortgage companies were asked whether, and how often, they extend to their customers closed-end mortgage loans to be used primarily for

[400] *See* 5 U.S.C. 603(d)(2)(A). The Bureau provided this notification and other information provided to the Chief Counsel with respect to the Small Business Review Panel process pursuant to section 609(b)(1) of the RFA.
[401] *See* 5 U.S.C. 603(d)(2)(B).
[402] *See* 15 U.S.C. 1603(1); 12 U.S.C. 2606(a)(1).
[403] *See* the Small Business Review Panel Report, appendix D, at 154-155 (PowerPoint slides from the Panel Outreach Meeting, "Topic 7: Impact on the Cost of Business Credit").")

personal, family, or household purposes but that are used secondarily to finance a small business, and whether the proposals then-under consideration would result in an increase in their customers' cost of credit. Second, the Bureau inquired as to whether, and how often, the SERs take out closed-end, home-secured loans to be used primarily for personal, family, or household purposes and use them secondarily to finance their small businesses, and whether the proposals under consideration would increase the SERs' cost of credit.

In general, the creditor SERs reported making few mortgage loans that are used primarily for personal, family, or household purposes (and therefore are covered by TILA and RESPA) but that are used, secondarily, to finance a small business. In addition, the few loans they described making would appear to fall within the TILA and RESPA exceptions for loans made primarily for business purposes,[404] and therefore would not be subject to the proposed rule. Based on the feedback obtained from the SERs at the Panel Outreach Meeting, the Bureau currently has no evidence that the final rule will result in an increase in the cost of credit for small business entities.

IX. Paperwork Reduction Act

A. Overview

Certain provisions of this final rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (Paperwork Reduction Act or PRA). As previously discussed, the Dodd-Frank Act amended TILA and RESPA to mandate specifically that the Bureau publish an integrated disclosure combining the TILA and RESPA disclosures for mortgage loans subject to either law or both laws. Dodd-Frank Act sections 1098, 1100A. The Dodd-Frank Act required the Bureau to

[404] *See* 15 U.S.C. 1603(1); 12 U.S.C. 2606(a)(1).

publish proposed rules and forms combining the disclosures by July 21, 2012. Dodd-Frank Act section 1032(f). On July 9, 2012, the Bureau issued a notice of the proposed rule, which was published in the *Federal Register* on August 23, 2012 (77 FR 51116). The Bureau did not receive any comments relating to the PRA analysis contained in the proposed rule or comments containing specific cost estimates addressing the Bureau's PRA analysis. This final rule finalizes that proposal.

This rule contains information collection requirements that have not been approved by the OMB and, therefore, are not effective until OMB approval is obtained. The unapproved information collection requirements contained in this rule are described below. The Bureau will publish a separate notice in the *Federal Register* announcing OMB's action on these requirements, including the OMB control number and expiration date.

This final rule amends 12 CFR part 1024 (Regulation X) and 12 CFR part 1026 (Regulation Z). Both Regulations X and Z currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation X is 3170-0016 and for Regulation Z is 3170-0015. The PRA (44 U.S.C. 3507(a), (a)(2) and (a)(3)) requires that a Federal agency may not conduct or sponsor a collection of information unless OMB has approved the collection under the PRA and the OMB control number obtained is displayed. Further, notwithstanding any other provisions of law, no person is required to comply with, or is subject to any penalty for failure to comply with, a collection of information that does not display a currently valid OMB control number (44 U.S.C. 3512).

Based on the specific statutory mandate to combine the disclosures under TILA and RESPA, the Bureau is amending Regulation X and Regulation Z to establish new disclosure requirements and forms in Regulation Z for closed-end consumer credit transactions secured by real property, other than reverse mortgages. Accordingly, the final rule requires, among other things, that an integrated Loan Estimate be provided to consumers within three business days after receipt of the consumer's application to replace the early TILA disclosure and RESPA GFE, and that an integrated Closing Disclosure be received by consumers at least three business days prior to consummation to replace the final TILA disclosure and RESPA settlement statement. The Dodd-Frank Act also made several amendments to the disclosure requirements in TILA and RESPA, a number of which are being finalized in this final rule.

The information collections in the final rule are required to provide benefits for consumers and are mandatory for all loans subject to the rule. *See* 15 U.S.C. 1601 *et seq.*; 12 U.S.C. 2601 *et seq*., 5532(f). Because the Bureau does not collect any information under the final rule, no issue of confidentiality arises. The likely respondents are commercial banks/savings institutions, credit unions, mortgage companies (non-bank lenders), mortgage brokers, and settlement agents[405] that would be required to provide the mortgage disclosures required by the final rule, either because they make mortgage loans subject to the final rule or because they may be responsible for completing or providing required disclosures.[406]

Under the final rule, the Bureau accounts for the entire paperwork burden for respondents under Regulation X. The Bureau generally also accounts for the paperwork burden associated with Regulation Z for the following respondents pursuant to its administrative enforcement

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[405] The Bureau assumes that these are the categories of businesses that are directly engaged with consumers in residential mortgage transactions. Although respondents under PRA for Regulation Z also include mortgage brokers and settlement agents, for purposes of the PRA analysis, the Bureau assumes that the creditor takes on the obligation to deliver the Loan Estimate and Closing Disclosure. Accordingly, there is minimal burden attributed to mortgage brokers and settlement agents. Also, under the final rule, the creditor is solely responsible for delivering the Loan Estimate, but settlement agents are also expressly permitted to provide the Closing Disclosure.

[406] For purposes of this PRA analysis, references to "creditors" or "lenders" refer collectively to commercial banks, savings institutions, credit unions, and mortgage companies (*i.e.*, nondepository lenders), unless otherwise stated. Moreover, reference to "respondents" shall generally mean all categories of entities identified in the sentence to which this footnote is appended, except as otherwise stated or if the context indicates otherwise.

authority: insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain nondepository institutions. The Bureau and the FTC generally both have enforcement authority over nondepository institutions for Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden to nondepository institutions. Other Federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Bureau's burden estimation methodology.

For purposes of this analysis, the Bureau assumes that any burden increase associated with the final rule is allocated to Regulation Z. As discussed in part IX.C.2, below, under the final rule there is no burden increase associated with Regulation X, and in fact there is a burden reduction attributed to Regulation X because the RESPA GFE and settlement statement disclosures are eliminated for all of the mortgage market, other than reverse mortgages, and replaced by the Loan Estimate and Closing Disclosure, under Regulation Z. Using the Bureau's burden estimation methodology, the total estimated burden for the approximately 14,195 banks, savings institutions, credit unions, and mortgage companies subject to the Regulation Z requirements in the final rule,[407] including Bureau respondents, is approximately 2.8 million hours for one-time changes and 0.8 million hours annually. The estimates presented in this part IX represent weighted averages across respondents. The Bureau expects that the amount of time required to implement each of the changes for a given institution may vary based on the size, complexity, and practices of the respondent.

B. Information Collection Requirements

The Bureau believes the following aspects of the final rule are information collection

[407] For the reasons described above, this figure excludes mortgage brokers and settlement agents.

requirements under the PRA: the development, implementation, and continuing use of new, integrated Loan Estimate and Closing Disclosure forms required for closed-end mortgage transactions subject to the final rule, the generation and provision of additional Loan Estimates in particular transactions as a result of increases in the closing costs that were included in the initial Loan Estimate, and the provision of the Post-Consummation Escrow Cancellation Notice and post-consummation Partial Payment Policy disclosure for certain mortgage transactions.[408] In the proposed rule the Bureau also discussed potential record retention requirements in a standardized, electronic, machine-readable format. For the reasons discussed above in part V, the Bureau has decided not to finalize such proposal.

1. Initial and Final Disclosures

As discussed above in part VII, the integrated Loan Estimate and the Closing Disclosure would result in certain compliance costs to covered persons. The Bureau believes that many of the costs of complying with these requirements would be common across the two disclosures, and therefore discusses them together here. Under the final rule, responsibility for delivering the Loan Estimate lies with the creditor. The Bureau believes that in some circumstances the Loan Estimate may be delivered by a mortgage broker acting on behalf of the creditor. The Bureau believes the costs would be similar for Loan Estimates delivered by creditors and mortgage brokers, and the estimates presented here are based on the assumption that the creditor delivers the Loan Estimate. As mentioned above, the creditor is responsible for providing the Closing

[408] The final rule also provides that, if the creditor permits a consumer to shop for a settlement service, the creditor shall provide the consumer with a written list identifying available providers of that service and stating that the consumer may choose a different provider for that service. Accordingly, creditors must comply with this additional requirement in certain transactions where consumers are permitted to shop for settlement services. This is an existing requirement under current Regulation X, 12 CFR 1024 app. C, but is not specifically itemized as a separate information collection under Regulation X. Because the timing of this requirement coincides with the provision of the initial Loan Estimate to consumers, the burden associated with the written list of providers requirement under the final rule is included in the burden calculation for the Loan Estimate.

Disclosure, but the settlement agent may provide the Closing Disclosure on the creditor's behalf, provided that one of them does so. The Bureau believes that if settlement agents were to take on a substantial portion of the responsibility for delivering the Closing Disclosure the costs would be similar, although they may be borne by different parties.

a. One-time costs

Covered persons will incur one-time costs associated with training and reviewing the regulation. In addition, covered persons who maintain their own software and compliance systems will incur one-time costs to adapt their software and compliance systems to produce the new forms.[409] Based on information provided by creditors and by software vendors, the Bureau believes that, in general, larger creditors develop and maintain their own compliance software and systems, while smaller creditors primarily rely on software and compliance systems provided by outside vendors. The Bureau estimates 95 percent of creditors rely on vendors.

The use of vendors will substantially mitigate the costs of revising software and compliance systems, as the efforts of a single vendor would address the needs of a large number of creditors. When a vendor is used, the Bureau assumes that each entity spends 3 months of software vendor training, installation, trouble, troubleshooting, and in-house testing time for 1 individual at small creditors and 8 individuals at larger firms. Based on feedback provided by small entities that participated in the Small Business Review Panel process, the Bureau estimates that creditors that maintain their own compliance software and systems would incur costs of roughly $100,000 to determine what changes need to be made and to update their systems to

[409] In addition to changing the format of the required forms, the new forms include numerous new disclosures that are required by the Dodd-Frank Act. The Bureau believes that this additional information will be added to the forms as part of the process of adapting software and compliance systems to produce the new forms, and therefore does not provide separate estimates for the costs of adding this additional information.

comply with the final rule.

Covered persons will incur one-time costs associated with training employees to use new forms and any new compliance software and systems. The Bureau estimates that each loan officer or other loan originator will need to receive eight hours of training. The Bureau further estimates that a trainer will spend an hour for every ten hours of trainee time.

The Bureau estimates that, for each covered person, two compliance officers would each spend 30 hours learning about the rule and developing training materials.

The Bureau estimates the total one-time costs of reading the relevant sections of the *Federal Register*, revising systems to provide the new disclosures, and training personnel for the Bureau respondents to be approximately $96.7 million, which corresponds to approximately 2,800,000 hours. Annualized over five years, this is an annual cost of $19.3 million. The Bureau estimates the one-time costs to the 134 depository institutions (including their depository affiliates) that are mortgage originator respondents of the Bureau under Regulation Z[410] would be $54.1 million, or 1,100,000 hours. For the estimated 2,787 nondepository institutions that are subject to the Bureau's administrative enforcement authority, the Bureau is assuming that it imposes half the burden imposed on nondepository institutions for purposes of this PRA analysis.[411] The Bureau estimates the one-time costs would be $42.6 million, or 1,700,000 hours.[412]

b. Ongoing costs

[410] There are 154 depository institutions (and their depository affiliates) that are subject to the Bureau's administrative enforcement authority. For purposes of this PRA analysis, the Bureau has calculated its burden hours and costs based on the estimated 128 depository institutions subject to Regulation Z that are mortgage originators.
[411] Unless otherwise specified, all references to burden hours and costs for the Bureau respondents are based on a calculation of half of the estimated 2,515 nondepository institutions.
[412] For additional information, please see the amended Supporting Statement for OMB Control Number 3170-0016, available at www.reginfo.gov.

In addition to one-time costs to revise systems and train employees, covered persons will have ongoing costs from providing the disclosures. Based on industry feedback, the Bureau understands that most disclosures will be generated by automated systems that use data collected by covered entities in the normal course of business. The Bureau believes that a small number of the disclosures in the Loan Estimate and Closing Disclosure will be generated using data that may not otherwise be collected in the normal course of business, and has considered this in calculating the ongoing burden associated with the information collection. The Bureau's estimates also account for the time covered persons would spend to review the forms for accuracy.

In calculating the total burden of providing Loan Estimates and Closing Disclosures, the Bureau assumes that Loan Estimates will be provided in response to applications for mortgages and Closing Disclosures will be provided three business days before mortgages are consummated. The Bureau further estimates entities will reissue on average two Loan Estimates per loan originated.

Table 2 summarizes these ongoing costs, which total an estimated $49.6 million per year. This represents an average cost of approximately $9 per origination.[413]

[413] Bureau respondents are estimated to originate approximately 4.8 million mortgages per year that would be subject to these information collections.

Table 2: Ongoing Costs for Integrated Disclosures for CFPB Respondents

	Loan Estimate	Closing Disclosure	Total
CFPB share of responses	9,922,000	5,413,000	15,335,000
Annual Burden (hours):			
Time per response (minutes)	3	6	
Total (hours)	393,000	439,000	832,000
Annual Burden ($):			
Labor costs	18,772,000	25,902,000	44,674,000
Production and distribution costs	3,144,000	1,756,000	4,900,000
Total	**21,916,000**	**27,658,000**	**49,574,000**

2. Implementation of Certain New Disclosures Mandated by the Dodd-Frank Act

As discussed above in part VII, title XIV of the Dodd-Frank Act added new disclosure requirements to TILA and RESPA for mortgage transactions, including the Post-Consummation Escrow Cancellation Notice and the post-consummation Partial Payment Policy disclosure for certain mortgage transactions. Although the Dodd-Frank Act does not specifically require inclusion of all of these new disclosures in the Loan Estimate and the Closing Disclosure, the Bureau is including some of these disclosures in the integrated forms and also requiring the provision of the separate Post-Consummation Escrow Cancellation Notice and separate Partial Payment Policy disclosure because doing so will benefit consumers and reduce burden on covered persons for the reasons discussed below.

Because creditors will be updating software and compliance systems for these two disclosures at the same time as and in conjunction with the updating for the Loan Estimate and the Closing Disclosure, the disclosures should be relatively easy to implement and the additional costs are likely to be minimal. The Bureau does not anticipate additional costs to covered persons as a result of the Post-Consummation Escrow Cancellation Notice and separate Partial Payment Policy disclosure, although, as noted above, covered persons may incur some insignificant recurring costs associated with providing this additional information to consumers once the implementing rules take effect. Although presentation of the information will be ongoing, modifying systems to perform these calculations and training existing employees on the new concepts will be a one-time cost. Accordingly, the Bureau does not provide separate estimates for the one-time or ongoing costs of adding this additional information beyond the cost estimates for the integrated disclosures that are discussed above and below.

3. Documentation Retention

The current record retention period of two years under Regulation Z supports private actions and regulatory enforcement actions. However, the CFPB has decided to require creditors to retain evidence of compliance with the integrated disclosure provisions of Regulation Z for three years after consummation of the transaction, except that creditors must retain the Closing Disclosure and all documents related to the Closing Disclosure for five years after consummation, consistent with the requirements of existing Regulation X. Creditors must retain evidence of compliance with the Post-Consummation Escrow Cancellation Notice and the post-consummation Partial Payment Policy disclosure for two years in accordance with the general retention period under 1026.25(a). The final rule also requires that if a creditor sells, transfers, or otherwise disposes of its interest in a mortgage and does not service the mortgage, the creditor shall provide a copy of the Closing Disclosure to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain such disclosures for the remainder of the five-year period. The CFPB recognizes that this requirement is different from the current requirements under Regulation X, which does not require a creditor to maintain these documents if the creditor disposes of its interest in the mortgage loan and does not service the mortgage loan. In addition, the final rule requires creditors and mortgage brokers to retain documentation sufficient to show their supervisory agencies that one of the exceptions applies whenever a cost for a service provided by a company that is owned by or affiliated with the creditor proves to be higher than estimated in the Loan Estimate, similar to the current document retention requirements under Regulation X for when the RESPA GFE is reissued. These retention requirements may result in additional cost to respondents that are creditors and mortgage brokers. However, the Bureau believes that any burden associated with the final rule's recordkeeping requirement will be minimal or de minimis, since only information sufficient to reconstruct the required record is required to be retained.

The final rule does not finalize the proposal to require the retention of data relating to the integrated disclosures in electronic, machine-readable format.

C. Summary of Burden Hours

1. Regulation Z

The below table summarizes the one time and annual burdens under Regulation Z associated with information collections affected by the final rule for Bureau respondents under the PRA.

Table 3: Regulation Z One-Time and Annual Burdens Impacted by Final Rule for Bureau Respondents

	Loan Estimate	Closing Disclosure	Total
Number of Respondents	**2,922**	**2,922**	**2,922**
CFPB share of responses	9,922,000	5,413,000	15,335,000
One-Time Burden:			
Labor (hours)	1,378,000	1,378,000	
Labor Costs	41,068,000	41,068,000	82,137,000
Annual Burden:			
Labor (hrs)	393,000	439,000	832,000
Labor costs	18,772,000	25,902,000	44,674,000
Production and distribution costs	3,144,000	1,756,000	4,900,000
Total	**21,916,000**	**27,658,000**	**49,574,000**

2. Regulation X

The final rule does not increase PRA burden associated with Regulation X, and instead removes the majority of the burden associated with two information collections: (i) the RESPA GFE and (ii) the RESPA settlement statement. Currently, the RESPA GFE and settlement statement disclosures account for approximately 10.9 million annual burden hours.[414] Under the final rule, the majority of this burden would be eliminated, with only reverse mortgage transactions remaining subject to the RESPA GFE and RESPA settlement statement requirements. The remaining burden associated with these disclosures in Regulation X would total approximately 62,400 hours, assuming no change in the time required to respond. The below table summarizes the annual burdens under Regulation X associated with information collections affected by the final rule.[415]

Table 4: Regulation X Annual Burdens Impacted by Final Rule

	GFE	HUD-1	Total
Number of responses	122400	72000	194400
Annual Burden (hrs):			
Time per response (minutes):	10	35	
Total (hours)	**20400**	**42000**	**62400**
Annual Burden ($):			
Labor Costs	938400	1932000	2870400

3. Net Effect on PRA Estimates of Ongoing Burden

As discussed above, by integrating the TILA and RESPA disclosures, the final rule

[414] The annual burdens attributed to the RESPA GFE and settlement statement (HUD-1 / HUD-1A) are 3,612,500 hours and 7,250,000 hours, respectively. *See* Supporting Statement for OMB Control Number 3170-0016, available *at* http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201110-3170-013 (CFPB); Supporting Statement for OMB Control Number 2502-0265, available at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=200810-2502-001 (HUD).
[415] All of the following estimates related to Regulation X are based on 2010 estimates.

eliminates the majority of the ongoing PRA burden under Regulation X for the RESPA GFE and settlement statement disclosures, while simultaneously creating ongoing burden attributable to the integrated disclosures in Regulation Z. On a market-wide basis, annual PRA burden in Regulation X decreases by approximately 10.8 million hours. The Bureau cannot similarly quantify the change in ongoing burden under Regulation Z, because current burden estimates neither itemize the burden hours attributable to the early, revised, and final TILA disclosures nor limit burden hours to mortgage transactions (but, instead, estimate for closed-end credit, generally). However, the total PRA burden associated with the new integrated disclosures for all institutions subject to Regulation Z is estimated to be 2.35 million hours annually. These changes reflect the decrease in the number of mortgages originated, increased systems automation, changes in methodology for calculating burden under the PRA, and the effects of the final rule.

D. Comments

The Consumer Financial Protection Bureau has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to:

The Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, D.C., 20552, or by the internet to *PRA@cfpb.gov*.

List of Subjects

12 CFR part 1024

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